SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 266.

THE METROPOLITAN RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is in the said court before you, between the District of Columbia and the Metropolitan Railroad Company, being No. 22,458 at law, a manifest error hath happened, to the great damage of the said Metropolitan Railroad Company, as by its complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore, you are hereby commanded if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 23d day of June, in the year of our Lord 1885, and of the Independence of the United States the one hundred and ninth.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To the District of Columbia:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein the Metropolitan Railroad Company is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

Service accepted June 23d, 1885.

A. G. RIDDLE, *Att'y D. C.*

Filed June 23, 1885.

R. J. MEIGS, *Clerk.*

[Endorsed:] District of Columbia *vs.* Metropolitan Railroad Company. Writ of error.

2 *Declaration. Filed No.* 27, 1880. *R. J. Meigs, Clerk.*

Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA,
vs.
THE METROPOLITAN RAILROAD COMPANY, } At Law. No. 22458.

The plaintiff, a body corporate under the laws of Congress, sues the defendant, also incorporated by an act of Congress, for the sum of one hundred and fifty-three thousand two hundred and sixteen dollars and fifteen cents ($153,216.15.)

The plaintiff says that by virtue of the act of Congress of February 21, 1871, entitled "An act to provide a government for the District of Columbia," the act of June 20, 1874, entitled "An act for the government of the District of Columbia, and for other purposes;" and the act of June 11, 1878, entitled "An act providing a permanent form of government for the District of Columbia," it was made the duty of the plaintiff to take charge of and improve, as might be prescribed by law, all the avenues, streets, and alleys of the cities of Washington and Georgetown in said District, for which said purpose the plaintiff was invested with ample powers and privileges, which said act of Congress are to the court here shown.

2½ And the plaintiff further says that the defendant was incorporated by the act of Congress of July 1, 1864, which it accepted, organized, and under which it continues, and exercises corporate powers, which act is to the court here shown.

That by the provisions of its said charter, by subsequent amendments thereof, and by due authority of law, it was authorized to construct a street railroad from Second street, at its intersection with Fayette street, in the city of Georgetown, in said District, to East Capitol street, at its intersection with Eleventh street east, in the city of Washington, in said District; also a street railroad from Seventh street west and Boundary street north to Sixth street west and O street southwest, in said city of Washington, for which purpose it might enter upon certain streets and avenues of said cities, among which were the following: First street east, Ninth street west, Boundary street north, Fourteenth street west, C street north, D street north, F street north, H street north, P street north, Connecticut avenue, New Jersey avenue northwest, and East Capitol street, in said city of Washington, and West street, High street, Second street, and Montgomery street, in said city of Georgetown, and that afterwards it did enter upon, lay down, and construct its tracks along and upon said streets and avenues, and still continues to retain and work its tracks along and upon said streets and avenues.

The fourth section of the charter of said company provides as follows:

"That the said corporation hereby created shall be bound to keep said tracks, and for the space of two (2) feet beyond the outer rail

thereof, and also the space between the tracks, at all times well paved and in good order, without expense to the United States or to the city of Washington."

Which said provision remains in full force, save as it has been modified by subsequent legislation.

That afterwards, in the due exercise of the powers conferred upon the plaintiff, and pursuant to law, it ordered and directed that said streets and avenues should be repaired and improved as follows, amending the grades and laying down new and greatly needed pavements, to wit:

3

First street east, concrete pavement; Ninth street west, from Pennsylvania avenue to P street north, concrete pavement; Ninth street west, from P street north to Boundary street, wood pavement; Boundary street north, Belgian pavement; Fourteenth street west, concrete pavement; C street north, wood pavement; D street north, wood pavement; F street north, between Fifth street and Ninth street west, Belgian pavement; F street north, between Ninth street and Thirteenth street west, wood pavement; F street north, between Thirteenth street and Fourteenth street west, concrete pavement; H street north, between Fifteenth street west and Vermont avenue, concrete pavement; P street north, between P street circle and Twenty-second street west, wood pavement; P street north, between Twenty-second street west and Rock creek, concrete pavement; Connecticut avenue, concrete pavement; New Jersey avenue northwest, wood pavement; and East Capitol street, wood pavement, in said city of Washington; and West street from Rock creek to three hundred and forty (340) feet west of said Rock creek, concrete pavement; West street from said three hundred and forty (340) feet west of Rock creek to High street, wood pavement; High street, wood pavement; Second street, wood pavement; and Montgomery street, cobble-stone pavement, in said city of Georgetown, of which the defendant had notice.

And thereupon it became and was the duty of said defendant, pursuant to said fourth section of its said charter, to conform its tracks to said grade and pave the entire space between two (2) lines running parallel with its tracks two (2) feet from and outside of its exterior rails, upon and along each and all of said streets and avenues so occupied by it in conformity with the plan prescribed by the plaintiff, which said duty and obligation said railroad company neglected to do, and did not do; and thereupon the plaintiff,

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in execution of its orders and plans, and to complete the repairs and improvements of said streets and avenues, was obliged to and did grade and pave said portions of said streets and avenues, which as aforesaid should have been graded and paved by said railroad company, to wit:

On said First street east, one thousand four hundred and seventy-six and sixteen hundredths ($1,476\frac{16}{100}$) square yards of concrete pavement, at three dollars ($3) per square yard, amounting to the sum of four thousand four hundred and twenty-eight dollars and forty-eight cents ($4,428.48), said repair and improvement of said

street being complete and finished by the plaintiff, to wit, November 24th, 1873. On said Ninth street west, between Pennsylvania avenue and M street north, eight thousand two hundred and nineteen and eighty-eight hundredths ($8,219\frac{88}{100}$) square yards of concrete pavement, at three dollars ($3) per square yard, amounting to the sum of twenty-four thousand six hundred and fifty-nine dollars and sixth-four cents ($24,659.64), said repair and improvement of said street being complete and finished by the plaintiff, to wit, October 23d, 1872. On said Ninth street west, between M street north and P street north, two thousand seven hundred and twenty-nine and fifty hundredths ($2,729\frac{50}{100}$) square yards of concrete pavement, at three dollars ($3) per square yard, amounting to the sum of eight thousand one hundred and eighty-eight dollars and fifty cents ($8,188.50), said repair and improvement of said street being complete and finished by the plaintiff, to wit, November 23d, 1873. On said Ninth street west, between P street north and Boundary street, five thousand four hundred and fifty-one (5,451) square yards of wood pavement, at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of seventeen thousand nine hundred and eighty-eight dollars and thirty cents ($17,988.30), said repair and improvement of said street being complete and finished by the plaintiff, to wit, November 28th, 1873. On said Boundary street north, two hundred and sixty-one and twenty-nine hundredths ($261\frac{29}{100}$) square yards of Belgian pavement, at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of nine hundred and fourteen dollars and fifty-two cents ($914.52), said repair and improvement of said street being complete and finished by the plaintiff, to wit, July 30th, 1875. On said Fourteen street west, nineteen hundred and sixty-five and ninety hundredths ($1,965\frac{90}{100}$) square yards of concrete pavement, at three dollars ($3) per square yard, amounting to the sum of five thousand eight hundred and ninety-seven dollars and seventy cents ($5,897.70), said repair and improvement of said street being complete and finished by the plaintiff, to wit, January 15th, 1874. On said C street north, two thousand and sixty-six and sixth-seven hundredths ($2,066\frac{67}{100}$) square yards of wood pavement, at three dollars and twenty cents ($3.20) per square yard, amounting to the sum of six thousand six hundred and thirteen dollars and thirty-three cents ($6,613.33), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 10th, 1873. On said D street north, fourteen hundred and fifty-three and sixty-seven hundredths ($1,453\frac{67}{100}$) square yards of wood pavement, at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of four thousand seven hundred and ninety-seven dollars and twelve cents ($4,797.12), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 6th, 1872. On said F street north, between Fifth street west and Ninth street west, two thousand and forty-eight (2,048) square yards of Belgian pavement, at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of seven thousand one hundred and sixty-four dollars and fifty cents ($7,164.50), said

repair and improvement of said street being complete and finished by the plaintiff, to wit, November 3d, 1873. On said F street north, between Ninth street west and Thirteenth street west, thirteen hundred and sixty-two and eighty-seven hundredths
6 (1,362$\frac{87}{100}$) square yards of wood pavement, at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of four thousand four hundred and ninety-seven dollars and fifty-four cents ($4,497.54), said repair and improvement of said street being completed and finished by the plaintiff, to wit, December 5th, 1873. On said F street north, between Thirteenth street west and Fourteenth street west, two hundred and seventy-five and thirty-three hundredths (275$\frac{33}{100}$) square yards of concrete pavement, at three dollars ($3) per square yard, amounting to the sum of eight hundred and twenty-five dollars and ninety-nine cents ($825.99), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 5th, 1873. On said H street north, one hundred and forty-one and seventy-seven hundredths (141$\frac{77}{100}$) square yards of concrete pavement, at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of four hundred and sixty-seven dollars and eighty-seven cents ($467.87), said repair and improvement of said street being complete and finished by the plaintiff, to wit, January 6th, 1874. On said P street north, between P street circle and Twenty-second street west, twenty-three hundred and twenty-three and twenty-eight hundredths (2,323.$\frac{28}{100}$) square yards of wood pavement, at two dollars and ten cents ($2.10) per square yard, amounting to the sum of four thousand eight hundred and seventy-eight dollars and eighty-nine cents ($4,788.89), said repair and improvement of said street being complete and finished by the plaintiff, to wit, May 2d, 1373. On said P street north, between Twenty-second street and Rock creek, three hundred and fifty-six and seventy-two hundredths (356$\frac{72}{100}$) square yards of concrete pavement, at three dollars ($3) per square yard, amounting to the sum of one thousand and seventy dollars and sixteen cents ($1,070.16), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 3d, 1872.

On said Connecticut avenue, five thousand nine hundred and
7 seventy-five and eighty-three hundredths (5,975$\frac{83}{100}$) square yards of concrete pavement, at three dollars ($3) per square yard, amounting to the sum of seventeen thousand nine hundred and twenty-seven dollars and forty-nine cents ($17,927.49), said repair and improvement of said avenue being complete and finished by the plaintiff, to wit, September 19th, 1873; on said New Jersey avenue northwest, three hundred and forty-one and forty hundredths (341$\frac{40}{100}$) square yards of wood pavement, at three dollars and thirty cents ($3.30) cents per square yard, amounting to the sum of one thousand one hundred and twenty-six dollars and sixty-two cents ($1,126.62), said repair and improvement of said avenue being complete and finished by the plaintiff, to wit, December 10th, 1873; on said East Capitol street, seven thousand eight hundred and seventy-four (7,874) square yards of wood pavement, at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of twenty-

five thousand nine hundred and eighty-four dollars and fifty cents ($25,984.50), said repair and improvement of said street being complete and finished by the plaintiff, to wit, November 1st, 1872; on said West street, between Rock creek and three hundred and forty (340) feet west of Rock creek, three hundred and forty (340) square yards of concrete pavement, at three dollars ($3) per square yard, amounting to the sum of one thousand and twenty dollars ($1,020), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 5th, 1872; on said West street, between three hundred and forty (340) feet west of Rock creek and Washington street, twenty-one hundred and fifty (2150) square yards of wood pavement, at one dollar and ninety cents ($1.90) per square yard, amounting to the sum of four thousand and eighty-five dollars ($4,085), said repair and improvement of said street being complete and finished by the plaintiff, to wit, May 2d, 1873; on said West
8 street, between Washington and High streets, fourteen hundred and fifty (1450) square yards of wood pavement, at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of four thousand seven hundred and eighty-five dollars ($4,785), said repair and improvement of said street being complete and finished by the plaintiff, to wit, September 18th, 1873; on said High street, two hundred and fifty (250) square yards of wood pavement, at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of eight hundred and twenty-five dollars ($825), said repair and improvement of said street being complete and finished by the plaintiff, to wit, on said High street, between Bridge street and Second street, December 5th, 1872; on said High street, between Second street and West street, September 18th, 1873; on said Second street, sixteen hundred (1600) square yards of wood pavement, at three dollars and thirty cents ($3.30) cents per square yard, amounting to the sum of five thousand two hundred and eighty dollars ($5,280), said repair and improvement of said street being complete and finished by the plaintiff, to wit, October 15th, 1873; on said Montgomery street, six hundred (600) square yards of cobble-stone pavement, at sixty-five (.65) cents per square yard, amounting to the sum three hundred and ninety dollars ($390), said repair and improvement of said street being complete and finished by the plaintiff, to wit, October 28th, 1872.

And the plaintiff claims as due it, in all, the sum of one hundred and fifty-three thousand two hundred and sixteen dollars and fifteen cents ($153,216.15), which said account for work and material has been duly presented to the defendant and payment thereof refused; whereby an action has accrued to the plaintiff to maintain its said action against the defendant and recover said sum of one hundred and fifty-three thousand two hundred and sixteen dollars and fifteen cents ($153,216.15), for which it asks judgment.

A. G. RIDDLE,
Attorney for Plaintiff.

The defendant is to plead hereto on or before the first special

9 term of the court, occurring twenty (20) days after service hereof; otherwise, judgment.

A. G. RIDDLE,
Attorney for Plaintiff.

In the Supreme Court of the District of Columbia. At Law, 22458. Filed January 4, 1881. R. J. Meigs, Clerk.

THE DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY, Defendant.

The clerk will enter my appearance for the defendant in the above-entitled case.

NATH'L WILSON.

In the Supreme Court of the District of Columbia. At Law, No. 22458. Filed January 4, 1881. R. J. Meigs, Clerk.

THE DISTRICT OF COLUMBIA, Plaintiff,
vs.
THE METROPOLITAN RAILROAD COMPANY, Defendant.

The defendant says that it is not indebted as alleged.

And for a further plea the defendant says that the plaintiff ought not to have and maintain its action aforesaid against it, because it says that it, the said defendant, did not, at any time within three next before the commencement of this suit, undertake or promise in manner and form as the said plaintiff hath above thereof complained against it, and this he is ready to verify; wherefore it prays judgment, &c.

10 And for a further plea the defendant says that the plaintiff ought not to have and maintain its action aforesaid, because it says that the said several supposed causes of action in the said declaration mentioned did not, nor did either of them, or any of them, accrue to the said plaintiff at any time within three years next before the commencement of this suit in manner and form as the plaintiff hath above complained, and this it is ready to verify; wherefore it prays judgment, &c.

NATHANIEL WILSON,
Att'y for Defendant.

In the Supreme Court of the District of Columbia. At Law, No. 22458. Filed March 24, 1881. R. J. Meigs, Clerk.

THE DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY.

The plaintiff joins issue upon the defendant's first plea.

And to the second and third pleas of defendant the plaintiff demurs, and says that the same are bad in substance.

A. G. RIDDLE,
Att'y for Plaintiff.

NOTE.—Among the matters of law to be argued in support of said demurrer is the following:

That the nature of the case is such that the statute of limitations as plead does not apply.

11 (17 Min. C. C., p. 49.)

SATURDAY, *March* 26, 1881.

MacArthur, Justice.

THE DISTRICT OF COLUMBIA, Pl'ff,
vs.
THE METROPOLITAN R. R. Co., Def't. } At Law. No. 22458.

At the request of the parties, by their respective attorneys, the court orders the demurrer filed in this case by the plaintiff heard in the general term in the first instance.

(4 Min. G. T., p. 207.)

MONDAY, *Jan'y* 9, 1882.

Chief Justice Cartter and Justices Hagner and James.

THE DISTRICT OF COLUMBIA, Plaintiff,
vs.
THE METROPOLITAN RAILROAD COMPANY, Defendant. } At Law. No. 22458. Cal. 71.

And now again come here the parties, by their respective attorneys, and thereupon, because it appears to the court here that the defendant's second and third pleas above pleaded are bad in substance, therefore it is considered that the plaintiff's demurrer be, and the same is hereby, sustained; and the court orders that the case be remanded to the special term for further proceedings herein.

12 THE DISTRICT OF COLUMBIA.
vs.
THE METROPOLITAN RAILROAD CO. } No. 22458. At Law.

Mr. Justice Hagner delivered the opinion of the court:

These cases have been argued here in the first instance, and the interesting questions involved have been exhaustively discussed by counsel.

In the first case the District of Columbia claims from the Washington & Georgetown Company $20,049.66, and in the second, the sum of $153,216.15 from the Metropolitan Company.

The pleadings are alike in essentials, and we shall consider those in the latter case, which we find printed in the record.

The declaration avers the incorporation of the plaintiff and defendant corporations; that the District Government is intrusted by law with ample powers to take charge of and improve all streets, avenues, &c., of the consolidated municipality; that by the charter of the defendant, which it duly accepted, it was authorized to construct a street railroad between certain points therein named;

that it entered upon, laid down, and constructed its tracks along the streets and avenues designated, and still continues to retain and work its tracks along and over such streets and avenues. That by the fourth section of the charter it was provided: "That the said corporation hereby created shall be bound to keep said tracks, and for the space of two (2) feet beyond the outer rail thereof, and also the space between the tracks, at all times well paved and in good order without expense to the United States or to the city of Washington." That afterwards, in the due exercise of the powers conferred upon the plaintiff, and pursuant to law, it ordered and directed that said streets and avenues should be repaired
13 and improved as follows, amending the grades and laying down new and greatly needed pavements, to wit: First street east, concrete pavement (with a similar statement as to a large number of other streets and avenues), of which the defendant had notice. That thereupon it became and was the duty of said defendant, pursuant to said fourth section of its charter, to conform its tracks to said grade, and pave the entire space between two lines running parallel with its tracks two feet from and outside of its exterior rails, upon and along each and all of said streets and avenues so occupied by it, in conformity with the plan prescribed by the plaintiff, which said duty and obligation said railroad company neglected to do, and did not do; and thereupon the plaintiff, in execution of its orders and plans, and to complete the repairs and improvements of said streets and avenues, was obliged to and did grade and pave said portions of said streets and avenues which as aforesaid should have been graded and paved by said railroad company, to wit: On said First street east, one thousand four hundred and seventy-six and sixteen hundredths (1,476.16) square yards of concrete pavement at three dollars ($3) per square yard, amounting to the sum of four thousand four hundred and twenty-eight dollars and forty-eight cents ($4,428.48), said repair and improvement of said street being completed and finished by the plaintiff, to wit, November 24, 1873, (with similar statements with respect to the other streets and avenues so graded and paved.)

And the declaration concluded:

"And the plaintiff claims as due it in all the sum of one hundred and fifty-three thousand two hundred and sixteen dollars and fifteen cents ($153,216.15), which said account for work and material has been duly presented to the defendant and payment thereof refused, whereby an action has accrued to the plaintiff to maintain its said action against the defendant, and recover said sum of one hundred and fifty-three thousand two hundred and sixteen dollars and fifteen cents ($153,216.15), for which it asks judgment."

14 The defendant appeared and pleaded—

1. That is not indebted as alleged.
2. Non-assumpsit *infra tres annos.*
3. *Actio non accrevit infra tres annos.*

The plaintiff joined issue upon the first plea and demurred to the

second and third, alleging as matter to be argued in support of the demurrer "that the nature of the case is such that the statute of limitations as pleaded does not apply."

First. It is insisted by the plaintiff that the statute of limitations of Maryland (1715, ch. 23), which is in force here, cannot be pleaded to any action brought by the District of Columbia.

If the question were to be decided upon the construction of the statute alone we should be very strongly inclined to sustain the plaintiff's position.

It is perfectly well settled that statutes of limitation which undertake to abridge or destroy the right of a suitor to bring his action at anytime before payment, and are therefore in derogation of the common law maxim that "the right never dies," are to be construed strictly, and will not be extended by implication to cases not clearly designed to be included.

It is equally true that courts, to arrive at the correct meaning of a statute, will examine its language throughout, and will import words from all portions of it to quality the meaning of the whole. 7 Gill., 326, Bode *vs.* State.

The courts of England applied these principles to the interpretation of the statute of the limitations of 32 Henry 8, ch. 2, which limited the right of action in suits of right, or assize, &c., unless brought within sixty years from the accrual of the right. The language was most general, "*no person or persons*" shall maintain such actions; yet, as the statute, in some of the sections, speaks of the possession of the claimant "or his ancestor," Sir Robert Brooke, in his Reading on the Statute, says: "A mayor and commonalty, by their name of corporation, and not by their proper names, may make title, after the statute, by eighty years past, because that is of their own possession and not of the seizen of their ancestor or predecessor, and the same of dean and chapter," &c. Brooke Stat. of Lim., 33. And this ruling is recognized as correct by all the authorities. 6 Comyn's Dig., Temps (Geo. II), p. 328.

Sir Robert Brooke died more than sixty years before the enactment of the 21 James I, ch. 16. It is impossible to doubt that the legislators who enacted that statute knew of this construction which many years before had been placed upon the statute of Henry VIII, and were therefore aware that the introduction of similar expressions into the law they were about to enact would be taken by the courts as indicating a purpose to confine its application to individuals. And in this connection it is important to examine the phraseology of the 21 Jac. I, from which the Maryland statute was in great part taken.

In no part of it is there any reference in express terms or by allusion to actions by municipalities. The purpose of the act is declared to be the quieting of men's estates; the parties plaintiffs are spoken of throughout as "person or persons," and it is declared in the first section that "no person or persons or any of their heirs," shall have or maintain such actions after, &c.; and such actions "shall be sued * * within twenty years next after title and cause of action first descended or fallen." By section 2, in case the

person entitled shall be, at the time the right first descended, &c., within the age of twenty-one years, *feme coverts*, imprisoned, or beyond seas, then such person and persons and their heir and heirs shall have an action within the time limited after the removal of such impediment.

By section 4, in case judgment be given for the plaintiff in such action and be reversed for error, "the party plaintiff, his heirs, executors, or administrators, may commence a new action," &c.

16 And by section 7, a saving is declared in favor of plaintiffs in the enumerated personal actions who may be under age, *feme covert*, &c., at the time such action accrued. None of the contingencies thus referred to could possibly apply to a municipality; and the personal actions enumerated, though properly such as would be brought by individuals, could not, for the greater part, be sustained by a city government.

It seems scarcely possible, with the rulings of the courts before them, that Parliament in enacting this statute in such words as these could have supposed it was using language which would comprehend the rights of the powerful municipalities of England, then almost at their greatest estate in the kingdom—far more wealthy, and in some respects more powerful, than the kings themselves—without adopting the precaution of adding words (and a few words would have sufficed) that would have placed the question beyond controversy. And it is a circumstance of the utmost significance that no case has been found, and we feel justified in saying, after examining every accessibly authority, that none exists, in the English reports, where the statute of 21 Jac. ch. 16, has been held applicable to actions brought by a municipality.

When we examine the Maryland statute of 1715, ch. 23, its language appears to give still stronger indication that its framers never supposed they were passing a statute controlling the rights of municipalities. Annapolis was then the only city in the province, and its charter was but seven years old. The provincial lawyers were generally well-read men, who had acquired their learning by study in the Inns of London, and their influence in shaping the legislation of the province was naturally very great. They must have known that either express declaration or strong implication of intention was necessary to include a municipality in such a statute, and that if they used words which were properly applicable to individuals alone in describing the cases to be comprehended by the statute, the courts would limit its application accordingly.

17 They omitted from the law the prior sections of the 21 Jac., I, relating to suits respecting land, but added a section concerning bonds and other securities not found in the usual statutes of limitation in this country. It seems to us that almost every section of the act contains language of the character we have referred to, strongly evincing the intention of the provincial legislature to confine itself to what the preamble declares to be the purpose of the act, "the quieting of the estates *of the inhabitants of the* province." In the enumeration of actions in section 2 (almost all of which are such as a municipality would be most unlikely to bring) there is an

exception of such as concern "*the trade or merchandise accounts between merchant and merchants, their* factors and servants, which are not residents within this province." The act contains the saving clause as to persons under age, *non compos mentis*, &c., and a further provision as to actions on specialties "*where the principal debtor and creditor have been both dead twelve years*"—contingencies as impossible of application to a municipality as its ability to claim through an ancestor was held to be under the 32 Henry VIII.

And again, we are struck by the significant fact that although the cases contained in the Maryland Reports, in which actions were brought by municipalities are numbered by the hundred, there can be found no reported case where it has been held that the statute applied to a suit brought by a municipality. In several of the cases, where the claims of a city government appear to have been contested by distinguished counsel with the utmost vigor, if we can only rely upon the dates stated by the reporter, the statute of limitations would have been a bar; but it never seems to have occurred to the counsel that it was available as a defense. Nor has such a decision been found in this jurisdiction, where for fifty years the courts have administered this statute; during which time a multitude of suits have been brought by the cities within the District, as to some of
18 which it is but reasonable to suppose the plea of the statute would have applied.

There is a reason of special force in favor of maintaining this position with respect to municipalities which controlled the courts in England where suits were brought by ecclesiastical corporations to recover lands which had been the property of their predecessors. It was there held that as to actions to recover such properties as these corporations were inhibited by law from alienating, the statutes of limitations could not apply; since, if it were otherwise, the laws against alienation could be practically repealed, as was said, "by a side wind," by the corporations, who had only to allow themselves to be dispossessed and then neglect to bring suit for the recovery of such possessions within the time limited by the statutes.

Blanchard on Limitations, 53.

By section 55 of Revised Statutes, District of Columbia, the District government is prohibited from releasing the indebtedness of any corporation or individual to the District.

Nothing would be simpler than for a District government, wishing to evade this prohibition, to neglect to bring suit for three years against a favored debtor, which would operate as a bar against an action brought by their more conscientious successors to recover a claim justly due the municipality.

But we are aware that in some of the States of the Union it has been held that the statute of limitations is a bar to certain descriptions of suits brought by municipalities; and in others, that it has been held to apply to all actions corporations may bring.

The decisions upon the point are confined to this country. They are not numerous and the different rulings do not appear to be based upon consistent reasoning. The cases in 66 Pa., 223, Evans *vs.*

Erie county, and 4 Devereux, 568, Armstrong *vs.* Dal-
19 ton, were suits against counties, and there it was said that small divisions of the State, like counties, cannot be considered as sovereign, and are not, for that reason, entitled to avail themselves of the principle, *Nullum tempus occurrit regi.* In Angell on Limitations, 6th edition, section 38, the author, after citing the case in 4 Dev., disposes of the subject in this single sentence: "In Ohio it was held that the statute runs against a town or city," citing the case of Cincinnati *vs.* First Presbyterian Church, 5 Ohio, 298. The ruling in that case seems to be within the censure or disapproval of Judge Dillon, in the following resume of the subject in 2 Dill. on Municipal Corporations, (3d ed.,) sec. 675. "Upon consideration it will perhaps appear that the following view is correct: Municipal corporations, as we have seen, have in some respects a double character—one public, the other (by way of distincton) private. As respects property not held for public use or upon public trusts, and as respects contracts and rights of a private nature, there is no reason why such corporations should not fall within limitation statutes and be affected by them. For example, in an action on contract or for tort, a municipal corporation may plead or have pleaded against it the statutes of limitations.

"But such a corporation does not own and cannot alien public streets or places, and no laches on its part or on that of its officers can defeat the right of the public thereto; yet there may grow up in consequence private rights of more persuasive force in the particular case than those of the public. * * * The author cannot assent to the doctrine that as respects public rights municipal corporations are within ordinary limitation statutes."

This distinction is in consonance with the decision in 12 Ill., 59, City of Alton *vs.* Illinois Transportation Co., where the matter involved was the ownership of a lot of ground in the city of Alton. "We do not think," says the court, "the rights of the public are
20 barred by our statute of limitations, which prescribes that certain real actions shall be brought within seven years after possession taken by defendants. Without stopping to inquire whether statutes of limitations apply to municipalities, we entertain no doubt that this statute has no application to the case before us. Whatever title in these grounds may be vested in the city she has not the unqualified control and disposition of them. They were dedicated to the public for particular purposes and only for such. She may make rules and control them, but cannot alien them, and holds them in trust for the people of the State and not of Alton alone."

For the purposes of the present decision it will be sufficient, without discussing the applicability of the first part of Judge Dillon's language to cases arising under the Maryland statute, that we adopt the concluding words of the learned judge, in which the author withholds his assent to the doctrine "that, as respects public rights, municipal corporations are within ordinary limitation statutes."

Second. It is contended by the plaintiff that, however the law may be with respect to municipal corporations in general, a different rule

should be held to apply to suits brought by the District of Columbia, because the money claimed in such cases is really due and payable to the United States. In support of this contention it is insisted that the District as now constituted is but a department of the General Government, its chief officers appointed by the President, its sole legislature the Congress of the United States, which appropriates immediately half of its expenses, directs the collection of its taxes, and supervises the disbursement of the municipal revenues, and that while one-half the amount of whatever might be recovered in this suit would be paid directly into the national Treasury, the other half would substantially enure to its benefit.

Certainly these circumstances place the District of Columbia, with respect to the United States, in a position strangely anomalous. They undoubtedly operate to reduce its powers of administra-
21 tion much below the usual level of municipal dependence, unless they do, as claimed, have the effect of communicating to it some portion of the dignity and immunities of the sovereign that has so seriously impaired its autonomy.

If the legislation of Congress had the extreme effect ascribed it by the plaintiff, the statute of limitations could no more apply to any action brought by the District of Columbia than it could to one brought in the name of the United States itself. The courts would certainly be controlled by the status of the real party in interest rather than by that of the nominal plaintiff.

Thus in 1st Scammon, 106, State Bank of Illinois *v.* Brown, it was held that the statute of limitations could not be successfully pleaded in a suit brought by the bank, in its own name, against one of its debtors, because the charter declared that the bank should belong to the State; and hence it was considered that a debt due to the bank was really one due to the State.

But this principal cannot properly be held to embrace all suits brought by the District of Columbia, in view of the comprehensive language of the statutes establishing the form of government in force here.

The second section of the Revised Statutes, relating to the District of Columbia, provides:

"The District is created a government by the name of the District of Columbia, by which name it is constituted a body corporate for *municipal* purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a *municipal corporation* not inconsistent with the Constitution and laws of the United States."

And the act of July 11, 1878, (20 Stats., p. 102,) declares that the District of Columbia shall remain and continue a municipal corporation, as provided in this section.

Its liability to be sued and impleaded to the full extent of other municipalities is plainly implied in the general lan-
22 guage which creates it "a body corporate for municipal purposes;" and we are of the opinion, in the absence of any provision to the contrary, that whatever liabilities may properly attach to municipalities in general are equally devolved upon the

District government; and hence, that wherever the statutes of limitations of Maryland may be interposed to a claim of an ordinary municipality, it may be availed of against the District of Columbia.

Third. The question next arises whether there is anything in the character of the claim involved in this suit, which renders the plea of the statute of limitations inapplicable as a bar to the action.

The claim grows out of an obligation imposed upon the companies by the United States, and assumed by them when they accepted the charters, under the authority of which alone they can claim any right to occupy the streets of the city and operate their roads.

By this requirement, contained in the 4th section of each charter already quoted, the companies are bound to keep their track and the adjacent part of the street described *at all times well paved, and in good order, without expense* to the United States and to the cities named.

It was one of the few conditions imposed upon them when they received their valuable franchises. It did not, *as of course*, result from the grant; for Congress might have agreed to dispense with it. Nor was it necessarily incident to the business of carrying passengers; since a large omnibus company might possibly make more extensive use of the streets in general without incurring any liability to pay for paving any part of them. But it is wholly a statutory provision, and the liability imposed, therefore, is wholly statutory.

After the acceptance of their charters they could not be heard to object that the provision was illegal, or incapable of enforcement against them. 17 Hun., (N. Y.) 242; New York City *vs.* Steel Railway Companies.

This duty, it is alleged, they refused to perform, and the
23 work was done and paid for by the District, which now seeks reimbursement in this action. Upon the plain words of the statute it seems clear to us it is not within the enumeration in the first section of the act of limitations of 1715, ch. 23. It is not "an action of account," or "upon the case, upon simple contract, book debt, or account," or "of debt for lending," or of "contract without specialty," or "of debt for arrearages of rent;" nor is it one of the other enumerated actions, as "assault," &c.

If it be either of the enumerated actions it could only be an action upon one of the classes of *contract* referred to. But the suit is not brought upon a "simple contract," or "contract without specialty," upon the part of the companies to reimburse the District for the expenditure. It is based upon the obligation on their part, implied by construction of law, to repay to the District what it has expended for work they were bound by statute to perform *without expense* to the city. If this paving has caused any expense to the District their statutory obligation has been broken, and this fact furnishes the consideration and foundation of the claim for reimbursement. Apart from the obligation upon the District to take all proper care of the streets, imposed by statute, and the duty of the companies arising under their charters to see that this work is done *without expense* to the municipality, the action could not be maintained, for the unauthorized payment of money by one party for another creates

no legal liability upon the latter to repay. But the right of action here grows out of and is founded upon the obligation in the charters of both the city and the companies, and the suit is an action founded upon these statutes, within the meaning of that term.

It has been held uniformly, from a period within a few years after the passage of the 21 James I, that an action upon a statute was not within the limitations of that act.

This was decided in the familiar case of Taylor *vs.* Jackson,
24 Croke Charles, 513, where it was held that the statute was no bar to an action of debt brought to recover a penalty imposed by 2 Edw. VI for removing corn before setting apart the tithes. So in 1 Saund., 55, Jones *vs.* Pope, where the action was against a sheriff for an escape under the statute I Rd. 2, ch. 12.

And this doctrine has been repeatedly applied by the courts in Maryland in cases arising under the act of 1715, ch. 23.

Such was the ruling in 2 H. & McH., 145, French *vs.* O'Healey, that an action founded on a statute cannot be barred by limitations, as debt for an escape.

So in 1 Gill, Longwell *vs.* Riginder, 57, it was held that a distress for rent in arrear based upon statute is not within the statute of limitations.

And in 2d Maryland, 19, Newcomer *vs.* Keedy, it was held in 1852, on the same ground, that limitations is no defense to an action on the case against a sheriff for a false return to a *fi. fa.*, because the officer is made answerable for such misconduct by force of an ancient statute.

So it was held in 2 Md. Ch. Dec., 213, Bond *vs.* Harris, that bonds given by an heir, electing to take part of the ancestors' land and pay their shares to the other heirs, in conformity with the statute for partition of lands, are not within the Maryland statute of limiations.

So in 14 Johns., Peace *vs.* Howard, 479, which was an action on a judgment rendered by a justice of the peace, the court say: "The statute (of New York) is not a bar to every action of debt, but only to those brought for arrearages of rent or founded on any contract without specialty. Debt on indenture reserving rent is not within the statute. The settled construction of the statute is that it applies solely to actions of debt founded upon contracts in fact, as contradistinguished from those arising by construction of law." In the present case the action is not founded upon a contract in fact within the meaning of the statute.

But there is a further and conclusive reason why this
25 action should not be held to be within the statute of limitations.

The municipality is charged with the entire custody of the streets and avenues of the city, and endowed with the amplest powers to pave and repair them, to change the grades, or otherwise improve them, and make all necessary regulations to this end. And it is perfectly settled that this is a continuing power, to be executed whenever it shall see fit to do so in its discretion. (6 Wheat., 597, Gozler *vs.* Georgetown; 2 Dill., §§ 685–6, 780, 989, 990.)

It has also full power to exact from property owners adjacent to the improvement a contribution, in reimbursement of the cost, in proportion to their respective properties. Before collecting these contributions the municipality usually ascertains the aliquot part to be paid by the individuals by an assessment. Such charges or assessments are in the nature of taxes or public dues, respecting streets and avenues, which are *the common property*, held for public use in trust for the body of the people, and are not owned by the municipality, nor alienable by it, as a city may, under certain circumstances, sell the *public property* and place the proceeds in the public treasury.

The imposition of such assessments is, in fact, the levy of a tax, and is made in the exercise of the taxing power.

7 Md., 535, Mayor, &c., *vs.* Greenmount Cemetery.

Such assessment constitute liens upon the property of individuals subject to the charge, and are entitled to priority of payment out of the proceeds in advance of all other claims.

7 Md., 107, Fulton *vs.* Nicholson.

And such paving assessment liens have been expressly held to be unaffected by the Maryland statute of limitations.

6 Md., 75, Esback *vs.* Pitts.

26 In 2 Cranch, C. C. Reports, 355, Hogan *vs.* Ingle, it was decided in this District that the statute of limitations of 1715, ch. 23, is not a bar to a distress for taxes due to the corporation of Washington; and no case has been found where the plea of the statute of limitations has been held to be a bar to an action to collect public taxes, except where some additional statutory provision, unknown in this jurisdiction, has been enacted to that effect.

We were referred to the cases in 41 Iowa, 184, City of Burlington and State *vs.* Yellow Jacket Mining Co., 14 Nev., 229, as holding a contrary doctrine; but an examination of the first case discloses that the Iowa statute, in words, provides that the provisions of the statute of limitations shall apply to all actions brought by or against all bodies, corporate or politic, except where otherwise expressly declared, and the court held the municipality was within this express provision.

In Nevada the statute of limitations in terms is declared to apply to all actions, whether brought by the State or individuals, and the court says the maxim *nullum tempus occurrit regi* has not been in force within that State since the adoption of the statute in question.

In some of the other States similar provisions are in force, and decisions based upon them have been carelessly considered as affecting the law elsewhere. Of course they can have no effect here, except as an evidence that in the absence of such a provision the statute of limitations would not have extended to the cases included within the special enactment.

This court, by its decision in 3d MacArthur, 122, Baltimore & Ohio Railroad Company *vs.* District of Columbia, has recognized the binding character of claims for taxes, notwithstanding the lapse

of time. In that case the railroad company sought to enjoin the District from the sale of its property for twenty years' arrearages of taxes. The company had refused to pay since 1858 (twenty-two years back), when an injunction had issued restraining a sale
27 by a collector for taxes then claimed to be due, and the subsequent acquiescence upon the part of the city was relied upon as a forfeiture "by waiver, laches, or lapse of time." This court overruled the other grounds of exemption presented by the company, and say, "in regard to the length of time for which the company should be held liable, we are of opinion that such liability reaches back for a period of twenty years from the institution of the present suit. It is a liability created by statute, and nothing short of a lapse of time sufficient to raise the presumption of payment will exonerate the property from its liability, and that period is twenty years.

It cannot be doubted that the statute, as pleaded in this case, would be no reply to an action brought by the District on such a claim for taxes asserted against the property of a land owner, in the absence of a statute declaring that limitation should be a bar.

Nor can it be doubted that the law would be the same if the claim sought to be enforced, instead of being an ordinary tax, were an assessment for paving against the property of a citizen.

In 46 Penn., 358, Megee *vs.* Com. use city of Pittsburg, which was an action by the city to recover the amount of an assessment against the defendant for his share of the cost of certain paving paid by the city, the defendant prayed an instruction that if the paving for which the claim was filed was paid by the city more than six years before the assessment was made, the claim of the city was barred by the statute of limitations. The court refused the prayer, and this ruling was sustained by the appellate court, which says: "The statute of limitations has no application to assessments under the acts, and the objection is grounded upon a misapprehension of the powers of the Legislature."

In the present case there has been no regular assessment against these companies. But the obligation imposed upon them by law, and which they have assumed by their acceptance of the
28 charters, is to perform their contract duty with respect to the public streets without any such assessment or levy as might be required in the case of holders of property abutting on the streets improved by the District. They have bound themselves, as part of the consideration for their franchise, to pave the designated parts of the streets *for themselves*, and any previous assessment by the District would be an idle and senseless ceremony. They knew exactly how much they were required to pave, and that they were to pay for it; and they had nothing to do except to perform the work "*without expense* to the United States or the District of Columbia." The assessment could have told them nothing not already known to them; and the District of Columbia could not have made the assessment, if required to do so, without obtaining the information from the company.

These companies, therefore, occupy, as to this statutory duty, the

same position with respect to the statute of limitations that they would hold if the amount chargeable against them for paving had been made the subject of a regular assessment, which they refused to pay, and for the recovery of which this action was brought. For those reasons we are of the opinion that the claim as presented is not obnoxious to the plea of the statute of limitations, and we decide the demurrer is well taken to the second and third pleas of the defendant.

Fourth. Under the demurrer we are forced to examine the entire case; and a large part of the argument has been addressed to the question whether under the charters and other statutes there exists in favor of the plaintiff a liability on the part of the defendant to perform the work described in the declaration.

1. It is contended on behalf of the defendants that the companies are not liable for entirely new pavements and changes in the grades; and we are referred to the case of Chicago *vs.* Sheldon, 9
29 Wall., 50, in support of this position. The decision there was based upon the special circumstances of the case. The city ordinance expressly limited the liability of the railroad company in undoubted terms to keeping the track, &c., "in good repair and condition," and the court reasonably decided that the company could not be held liable for curbing, grading, and paving the streets with an entirely new pavement in the face of a contrary stipulation.

But the language is widely different here. The companies, by the 4th section, are bound to keep the tracks, &c., at all times, "*well paved* and *in good order*." By section 5 of the charter of 17th of May, 1862, the Washington & Georgetown railway, and section 5 of the charter of the Metropolitan road, July 1, 1864, it is enacted: "That nothing in this act shall prevent the Government, at any time, from *altering the grades* or *otherwise improving all* avenues or streets occupied by said roads, or the respective cities from so altering or improving such streets or avenues and the sewerage thereof, as may be under their respective authority and control; *and in such event it shall be the duty of such company to change their said railroad so as to conform to such grade or pavement.*"

By section 20 of the charter of the Metropolitan road it is further enacted that the said railroad company shall keep in good repair, &c., the flagstones or cross-walks leading to, upon, or over their tracks at the crossings of the streets, "and shall further, whenever necessary to render such crossings dry and convenient, raise or elevate the same sufficiently for that purpose, and shall adjust the adjoining pavement so as to make it convenient for carriages to pass said crossings."

And in both charters it was provided "that the use and maintenance of the said roads shall be subject to the municipal regulations of the cities of Washington and Georgetown within their several corporate limits."

Without pausing to examine the effect of the act of June
30 20, 1874, and other statutes on the subject, we entertain no doubt that these companies were bound, by their charters, not only to pave once the designated portions of the streets, but to

repair the paving, and to change the grade and lay new pavements, within the prescribed limits, whenever the municipality, in its discretion, should see proper to make changes in the streets, rendering such work proper to be done on the part of the companies.

The reported cases fully sustain such a construction. In 51 Penn., 41, Pittsburgh and Birmingham R. R. Co. *vs.* Borough of Birmingham, the charter required the previous assent of the borough, by ordinance, before the railroad could occupy its streets, and declared that the company "shall keep so much of the streets of the city and borough *as may be used and occupied by them* in perpetual good repair at the proper expense and charge of the said company."

The ordinance of the borough agreeing that the company should occupy the streets declared that "said R. R. Co., in addition to other requirements of their charter, shall *keep Carson street in perpetual good order and repair, from curb to curb, its whole length,* from the time of accepting this ordinance."

These additional requirements were held by the court of appeals of Pennsylvania to be binding upon the company, although onerous and inconsistent with those prescribed by the charter, which gave no authority to the borough to add any further conditions, but merely requires its previous assent before the railroad could occupy the streets.

But in the present case Congress distinctly required, and the companies as distinctly agreed, that the use and maintenance of the road should be subject to the municipal regulations, which required the renewal of the pavement and change of the grades to conform to the changes in the other part of the street.

2d. Can an action be maintained at law to recover back
31 what the District has been compelled to pay on the default of the companies to perform the work described in the declaration?

Assuming the obligation to be in force, it would seem too plain for argument that a right of action in some form must exist. For we can scarcely regard as serious the contention of counsel for the roads that the only available remedy in the case of default would be an application for a mandamus to compel the company to do the work, or the suing out of a *scire facias* to deprive them of their charters for neglect of their charter obligations.

A municipality that would leave the track of a railroad company refusing to comply with a required change of grade at a dangerous elevation or depression, while it was following an action of mandamus through the different courts on appeal, instead of at once performing its plain duty of making the requisite changes to insure the public safety, would deserve a punishment more severe than the inevitable public censure. It would have no option in such a case, but would be forced to perform the omitted work. That the negligent party should be made to repay the expense would be only a scant measure of justice.

We will refer to a few cases in support of the right of action under such circumstances.

In 45 Penna., 137, Town of Phœnixville *vs.* Phœnixville Iron Co., an action was brought by the town to recover from the company the amount it had expended for the repair of a bridge crossed by the defendant's railroad and also by foot passengers, which had been built at joint expense, but which the defendant refused to repair. Judge Strong, speaking for the court which sustained the town's right to recover, notices that the defendant's charter authorized them to *construct* the bridge and cross it with their railroad, but says nothing of *repairs;* but he adds: "It is a fair presumption the Legislature never intended to give away public rights or to
32 impose burdens upon any local community without compensation. This is a continuing obligation upon the company to keep up the bridge."

In 46 Pa., 224, Penn. R. R. Co. *vs.* Duquesne Borough, the town brought an action to recover back the sum it had expended in rebuilding a bridge across a canal which had been taken by the railroad company under authority of a law of the State, which declares the company should receive this and the other public work subject to existing contracts respecting them. The canal had erected the bridge originally, and it was insisted that the railroad, as its successor, was bound to repair and rebuild it.

The court held the action could be maintained, and in their opinion used this language: "Whenever any person or corporation is bound to repair a public highway and refuses to do so when necessary, on notice by the proper officers having the general oversight thereof, those officers may repair it and recover the proper expense thereof in an action of assumpsit founded on the duty."

A case very much like the one before us is reported in 44 Wisconsin Reports, 238, City of Ocato *vs.* Chicago & N. Western R. R. Co. By the general statutes a corporation making a railroad is required to restore any street it may pass through to its former condition, and thereafter maintain the same in such condition against any effects thereafter produced by the railroad. Nothing is said in the law as to who should defray the cost of the repairs, nor of any action to recover their cost. The defendant, after constructing its road through the city, though requested by the authorities, neglected to restore the streets and sidewalks to their former condition. The common council, which under the charter had full authority over the streets, procured the necessary repairs to be made and the city paid for them, and it was held it could recover from the railroad company all reasonable expenses so incurred.

3d. The remaining question relates to the form of the
33 declaration, which we must examine under the demurrer to the plea.

There seemed to exist some uncertainty in the minds of the counsel as to the precise nature of the declaration. The first plea of the defendant, which is *nil debet,* seems to have assumed the action to be *debt,* to which that plea is the general issue, while it is not applicable to an action of assumpsit or on the case. It is also laid

down that *nil debet* is almost the only plea used *in debt on statutes* whether *qui tam* or otherwise.

2 Evans' Harris, 94.

We think a recovery in the present case should be sought in an action of assumpsit founded upon the statutory obligations of the charter.

This form of action seems more appropriate than debt, because the latter lies for a sum certain, whereas the recovery here should be for such reasonable sum, to be ascertained by a jury, as the work done was really worth. Although the companies are alleged to have neglected to perform their duty in the premises, this would not authorize a recovery against them for the actual sum paid by the District if the jury should think this was an extravagant amount, which the officers recklessly expended in the work, without reference to its true value. As in the case cited from 44 Wisconsin, the the recovery should be limited to *reasonable expenses* incurred by the city. The jury in that case rejected one of the items of the account claimed by the city, as not a proper charge against the said railroad company under the circumstances.

The case in 46 Penna. was in assumpsit founded on the duty arising out of the statutory obligation of the railroad company to keep up the canal bridge.

In 3 H. & McH., 323, Ott *vs.* Chapline, an action of assumpsit was sustained, brought by a collector, who, having taxes to collect
34 from the defendant, omitted to levy them, and having paid the amount over to the public, brought his action for money paid at the defendant's request.

In the same volume, at page 4, is to be found a very instructive case of Gash *vs.* Taylor. The plaintiff, the sheriff of Harford county, had paid into the State treasury, in settling his accounts, the amount of the treble tax required to be paid by the defendant as a non-juror for the years 1777–'78–'79; and in 1790 he brought an action of assumpsit in the general court to recover back the amount thus paid. The defendant asked an instruction that there should be no recovery, notwithstanding the payment, unless it was shown that the payment was at the instance and request of the defendant. This prayer was refused by the court, and the plaintiff recovered.

It is worthy of remark here, that although the claim in that case was long out of date and based upon a claim of treble taxes created by a law made only for the exigency of the war, long since closed, the plea of the statute of limitations was not interposed.

In 6 H. & J., 383, Mayor, &c., of Balto. *vs.* Howard, the city brought assumpsit to recover a sum of money due for paving taxes imposed by the city on the defendant. It was held the action would lie whether the act authorizing the tax gave a particular remedy or none, upon the principle that where a law gives a claim to one against another it raises an implied assumpsit or legal obligation to pay; and that where a remedy by distress or action of debt is plainly given, it is only cumulative, and does not take away the action arising by implication on the legal obligation to pay a claim created by law.

So in 1 Gill & Johnson, 499, Dugan *vs.* Margave, the court sustained the right to recover in assumpsit for taxes levied under the city charter, and which the collector had lost the right to collect by distress by his neglect in giving the notice required by law. "The imposition and assessment of a tax by the mayor, &c., in
35 pursuance of the charter, creates a legal obligation to pay such tax, on which the law raises an implied assumpsit by the person taxed."

The tax in this case was levied in 1817, and the case was tried in the appellate court. It was argued by able counsel for the defendant, but the statute was not pleaded.

And in 16 Md., 259, Clemens *vs.* Mayor, &c., of Baltimore, it was held that a claim for paving taxes assessed under a statute might be recovered in an action of assumpsit.

The declaration in its present form must be held to be in debt and should be changed to assumpsit. It should also charge that the sums paid and now sought to be recovered back were what the work was reasonably worth, and it should set forth the other sections of the charter which require the companies to conform their track to the grade of the street, and should refer to the provision that the road shall be subject to the municipal regulations.

Demurrers of plaintiff to defendants' second and third pleas sustained, with leave to the plaintiff to amend its declaration.

The Chief Justice and Associate Justices Hagner and James sat in this case.

In the Supreme Court District of Columbia. At Law, No. 22458.
Filed Feb. 10, 1882. R. J. Meigs, Clerk.

THE DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY.

Amended Declaration.

The plaintiff, a body corporate under the laws of Congress,
36 sues the defendant, also incorporated by an act of Congress, for the sum of one hundred and sixty-one thousand six hundred and twenty-two dollars and fifty-two cents ($161,622.52).

The plaintiff says that by virtue of the act of Congress of February 21, 1871, entitled "An act to provide a government for the District of Columbia," the act of June 20, 1874, entitled "An act for the government of the District of Columbia and for other purposes," and the act of June 11, 1878, entitled "An act providing a permanent form of government for the District of Columbia," it was made the duty of the plaintiff to take charge of and improve, as might be prescribed by law, all the avenues, streets, and alleys of the cities of Washington and Georgetown, in said District, for which said purpose the plaintiff was invested with ample powers and privileges, which said acts of Congress are to the court here shown.

And the plaintiff further says that the defendant was incorporated by the act of Congress of July 1, 1864, which it accepted, organized,

and under which it continues and exercises corporate powers, which act is to the court here shown.

That by the provisions of its said charter, by subsequent amendments thereof, and by due authority of law, it was authorized to construct a street railroad from Second street, at its intersection with Fayette street, in the city of Georgetown, in said District, to East Capitol street, at its intersection with Eleventh street east, in the city of Washington, in said District; also a street railroad from Seventh street west and Boundary street north to Sixth street west and O street southwest, in said city of Washington, for which purpose it might enter upon certain streets and avenues of said cities, among which were the following: First street east, Ninth street west, Boundary street north, Fourteenth street west, Seventeenth street west, C street north, D street north, F street north, H street north, P street north, Connecticut avenue, New Jersey avenue northwest, New York avenue north, and East Capitol street, in said city of Washington, and West street, High street, Second street, and Montgomery
37 street, in said city of Georgetown, and that afterwards it did enter upon, lay down, and construct its tracks along and upon said streets and avenues, and still continues to retain and work its tracks along and upon said streets and avenues.

That by the first section of the charter of said company it is "Provided, That the use and maintenance of the said road shall be subject to the municipal regulations of the city of Washington within its corporate limits."

The fourth section of the charter of said company provides as follows: "That the said corporation hereby created shall be bound to keep said tracts, and for the space of two (2) feet beyond the outer rail thereof, and also the space between the tracks, at all times well paved and in good order without expense to the United States or to the city of Washington."

The fifth section of said charter is as follows: "That nothing in this act shall prevent the government at any time, at their option, from altering the grade or otherwise improving all avenues and streets occupied by said roads, or the city of Washington from so altering or improving such streets and avenues, and the sewerage thereof as may be under their respective authority and control; and in such event it shall be the duty of said company to change their said railroad so as to conform to such grade and pavement."

The sixth section of said charter declares that said "act may at any time be altered, amended, or repealed."

Which said several provisions of the defendant's charter, as herein set out, remain in full force, save as they have been modified by subsequent legislation. That afterwards, in the due exercise of the powers conferred upon the plaintiff and pursuant to law, it ordered and directed that said streets and avenues should be repaired and improved as follows, amending the grades and laying down new and greatly needed pavements, to wit: First street east, concrete pavement; Ninth street west, from Pennsylvania avenue to
38 P street north, concrete pavement; Ninth street west, from P street north to Boundary street, wood pavement; Boundary

street north, Belgian pavement; Fourteenth street west, concrete pavement; Seventh street west, concrete pavement; C street north, wood pavement; D street north, wood pavement; F street north between Fifth street and Ninth street west, Belgian pavement; F street north, between Ninth street and Thirteenth street west, wood pavement; F street north, between Thirteenth street and Fourteenth street west, concrete pavement; H street north, between Fifteenth street west and Vermont avenue, concrete pavement; P street north, between P street circle and Twenty-second street west, wood pavement; P street north, between Twenty-second street west and Rock creek, concrete pavement; Connecticut avenue, concrete pavement; New Jersey avenue northwest, wood pavement; New York avenue north, concrete pavement; and East Capitol street, wood pavement, in said city of Washington; and West street, from Rock creek to three hundred and forty (340) feet west of said Rock creek, concrete pavement; West street from said three hundred and forty (340) feet west of Rock creek to High street, wood pavement; High street, wood pavement; Second street, wood pavement; and Montgomery street, cobble-stone pavement, in said city of Georgetown, of which the defendant had notice. And thereupon it became and was the duty of said defendant, pursuant to said fourth section of its charter, to conform its tracks to said grade, and pave the entire space between two (2) lines running parallel with its tracks, two (2) feet from and outside of its exterior rails, upon and along each and all of said streets and avenues so occupied by it, in conformity with the plan prescribed by the plaintiff, which said duty and obligation said railroad company neglected to do, and did not do; and thereupon the plaintiff, in execution of its orders and plans, and to complete the repairs and improvements of said streets and avenues, was
39 obliged to and did grade and pave said portions of said streets and avenues which, as aforesaid, should have been graded and paved by said railroad company, to wit:

On said First street east, one thousand four hundred and seventy-six and sixteen hundredths (1,476.16) square yards of concrete pavement at three dollars ($3) per square yard, amounting to the sum of four thousand four hundred and twenty-eight dollars and forty-eight cents ($4,428.48), said repair and improvement of said street being completed and finished by the plaintiff, to wit, November 24, 1873. On said Ninth street west, between Pennsylvania avenue and M street north, eight thousand two hundred and nineteen and eighty-eight hundredths (8,219.88) square yards of concrete pavement at three dollars ($3) per square yard, amounting to the sum of twenty-four thousand six hundred and fifty-nine dollars and sixty-four cents ($24,659.64), said repair and improvement of said street being completed and finished by the plaintiff, to wit, October 23, 1872. On said Ninth street west, between M street north and P street north, two thousand seven hundred and twenty-nine and fifty hundredths (2,729.50) square yards of concrete pavement at three dollars ($3) per square yard, amounting to the sum of eight thousand one hundred and eighty-eight dollars and fifty cents ($8,188.50), said repair and improvement of said street being completed and finished by

the plaintiff, to wit, November 23, 1873. On said Ninth street west, between P street north and Boundary street, five thousand four hundred and fifty-one (5,451) square yards of wood pavement at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of seventeen thousand nine hundred and eighty-eight dollars and thirty cents ($17,988.30), said repair and improvement of said street being completed and finished by the plaintiff, to wit, November 28, 1873. On said Boundary street north, two hundred and sixty-one and twenty-nine hundredths (261.29) square yards of Belgian pavement at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of nineteen hundred and fourteen dollars and
40 fifty-two cents ($1,914.52), said repair and improvement of said street being completed and finished by the plaintiff, to wit, July 30, 1875. On said Fourteenth street west, nineteen hundred and sixty-five and ninety hundredths (1,965.90) square yards of concrete pavement at three dollars ($3) per square yard, amounting to the sum of five thousand eight hundred and ninety-seven dollars and seventy cents ($5,897.70), said repair and improvement of said street being complete and finished by the plaintiff, to wit, January 15, 1874. On said Seventeenth street west, between New York avenue and K street north, 2,454 square yards of concrete pavement at $3 per square yard, amounting to the sum of $7,362, said repair and improvement of said street being complete and finished by the plaintiff, to wit, July 26, 1872. On Fourteenth street west, at its intersection with New York avenue north, 139 square yards of concrete pavement at $3.20 per square yard, amounting to the sum of $444.80, said repair and improvement of said street being complete and finished by the plaintiff, to wit, July 26, 1872. On said C street north, two thousand and sixty-six and sixty-seven hundredths (2,066.67), square yards of wood pavement at three dollars and twenty cents ($3.20) per square yard, amounting to the sum of six thousand six hundred and thirteen dollars and thirty-three cents ($6,613.33), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 10, 1873. On said D street north, fourteen hundred and fifty-three and sixty-seven hundredths (1,453.67) square yards of wood pavement at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of four thousand seven hundred and ninety-seven dollars and twelve cents ($4,797.12), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 6, 1872. On said F street north, between Fifth street west and Ninth street west, two thousand and forty-eight (2,048) square yards of Belgian
41 pavement at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of seven thousand one hundred and sixty-four dollars and fifty cents ($7,164.50), said repair and improvement of said street being complete and finished by the plaintiff, to wit, November 3, 1873. On said F street north, between Ninth street west and Thirteenth street west, thirteen hundred and sixty-two and eighty-seven hundredths (1,362.87) square yards of wood pavement at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of four thousand four hundred and

ninety-seven dollars and fifty-four cents ($4,497.54), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 5, 1873. On said F street north, between Thirteenth street west and Fourteenth street west, two hundred and seventy-five and thirty-three hundredths (275.33) square yards of concrete pavement at three dollars ($3) per square yard, amounting to the sum of eight hundred and twenty-five dollars and ninety-nine cents ($825.99), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 5, 1873. On said H street north, one hundred and forty-one and seventy-seven hundredths (141.77) square yards of concrete pavement at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of four hundred and sixty-seven dollars and eighty-seven cents ($467.87), said repair and improvement of said street being complete and finished by the plaintiff, to wit, January 6, 1874. On said P street north, between the P street circle and Twenty-second street west, twenty-three hundred and twenty-three and twenty-eight hundredths (2,323.28) square yards of wood pavement at two dollars and ten cents ($2.10) per square yard, amounting to the sum of four thousand eight hundred and seventy-eight dollars and eighty-nine cents ($4,788.89), said repair and improvement of said street being complete and finished by the plaintiff, to wit, May 2, 1873. On said P street north, between Twenty-second street and Rock creek, three hundred and fifty-six and seventy-two hundredths (356.72)
42 square yards of concrete pavement at three dollars ($3) per square yard, amounting to the sum of one thousand and seventy dollars and sixteen cents ($1,070.16), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 3, 1872. On said Connecticut avenue, five thousand nine hundred and seventy-five and eighty-three hundredths (5,975.83) square yards of concrete pavement at three dollars ($3) per square yard, amounting to the sum of seventeen thousand nine hundred and twenty-seven dollars and forty-nine cents ($17,927.49), said repair and improvement of said avenue being complete and finished by the plaintiff, to wit, September 19, 1873. On said New Jersey avenue northwest, three hundred and forty-one and forty hundredths (341.40) square yards of wood pavement at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of one thousand one hundred and twenty-six dollars and sixty-two cents ($1,126.62), said repair and improvement of said avenue being complete and finished by the plaintiff, to wit, December 10, 1873. On said East Capitol street, seven thousand eight hundred and seventy-four (7,874) square yards of wood pavement at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of twenty-five thousand nine hundred and eighty-four dollars and fifty cents ($25,984.50), said repair and improvement of said street being complete and finished by the plaintiff, to wit, November 1, 1872. On said West street, between Rock creek and three hundred and forty (340) feet west of Rock creek, three hundred and forty (340) square yards of concrete pavement at three dollars ($3) per square yard, amounting to the sum of one thousand and twenty dollars

($1,020), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 5, 1872. On said West street, between three hundred and forty (340) feet west of Rock creek and Washington street, twenty-one hundred and fifty (2,150) square yards of wood pavement at one dollar and ninety cents ($1.90) per square yard, amounting to the sum of
43 four thousand and eighty-five dollars ($4,085), said repair and improvement of said street being complete and finished by the plaintiff, to wit, May 2, 1873. On said West street, between Washington and High streets, fourteen hundred and fifty (1450) square yards of wood pavement at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of four thousand seven hundred and eighty-five dollars ($4,785), said repair and improvement of said street being complete and finished by the plaintiff, to wit, September 18, 1873. On said High street, two hundred and fifty (250) square yards of wood pavement at three dollars and thirty cents (3.30) per square yard, amounting to the sum of eight hundred and twenty-five dollars ($825), said repair and improvement of said street being complete and finished by the plaintiff, to wit, on said High street, between Bridge street and Second street, December 5, 1872; on said High street, between Second street and West street, September 18, 1873. On said Second street, sixteen hundred (1600) square yards of wood pavement at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of five thousand two hundred and eighty dollars ($5,280), said repair and improvement of said street being complete and finished by the plaintiff, to wit, October 15, 1873. On said Montgomery street, six hundred (600) square yards of cobble-stone pavement at sixty-five (65) cents per square yard, amounting to the sum of three hundred and ninety dollars ($390), said repair and improvement of said street being complete and finished by the plaintiff, to wit, October 28, 1872.

Which said several sums were and are the just and reasonable costs of the said several items of paving as hereinbefore set forth, amounting in total to the sum of $161,622.52, which said sum, in the form of an itemized account, was afterwards, to wit, on the 25 day of February, 1880, presented to the defendant and payment thereof demanded, which was refused, to wit, at the District aforesaid.
44 Whereby and by the force and effect of the statutes aforesaid a right of action occurred thereon to the plaintiff to maintain its said suit against the defendant to recover said sum with interest thereon from said 25th day of February, 1880, for which it asks judgment.

A. G. RIDDLE,
Attorney for Plaintiff.

The defendant is to plead hereto on or before the first special term of the court, occurring twenty (20) days after service hereof, otherwise judgment.

A. G. RIDDLE,
Attorney for Plaintiff.

Service acknowledged.

NATHANIEL WILSON.

Feb'y 10, 1882.

In the Supreme Court of the District of Columbia.

Filed March 12, 1884. R. J. Meigs, Clerk.

THE DISTRICT OF COLUMBIA,
vs.
THE METROPOLITAN RAILROAD COMPANY, } At Law. No. 22458.

The defendant, for plea, says that by its charter there was imposed upon it the duty to change the locality of its railroad so as to conform to changes which might be made in the grades or otherwise in the streets or avenues of the city of Washington; and further, to keep the spaces embraced within two lines drawn two feet from the outer rails of its tracks and running parallel with said rails at all times well paved and in good order without expense to the
45 United States or the cities of Washington and Georgetown; that said duty was in force at the different times mentioned in the declaration when the work was done, the cost whereof is alleged to be chargeable to the defendant.

And the defendant says that the measure of the said duty and the manner of performing the same depended upon the law of the land and not upon the discretion and direction of the plaintiff, and that the said duty was owing and to be performed by the defendant and not by the plaintiff, except only in case of default by the defendant after due notice to perform the same.

And the defendant says it performed and discharged said duty by changing, at its own expense, its railroad so as to make it conform to any and all changes in the grades or otherwise in the following-described streets and avenues in the said city of Washington, enumerated in the declaration in this case, to wit, Fourteenth street west, "C" street north, "D" street north, "F" street west, "H" street north, New Jersey avenue between "C" and "D" streets; and by paving, and keeping at all times well paved and in good order, the entire space aforesaid, that is to say, the spaces embraced within two lines drawn two feet from the outer rails of its tracks and running parallel with the rails of the defendant laid in the aforesaid avenues and streets, without expense to the United States or the cities of Washington and Georgetown or to the District of Columbia, the successor of said cities; but that, notwithstanding such performance and discharge of the said duty, the Board of Public Works, an agent of the plaintiff, constituted by the act of Congress of the 21st of February, 1871, entitled "An act to provide a government for the District of Columbia," claimed, to wit, in the month of June, 1871, and afterwards, that by virtue of the said act and the legislation of the plaintiff thereunder, it, the said Board, was invested with the power and authority to pave and repair the streets and avenues in the declaration mentioned in its discretion, and
46 independent of the duty imposed upon the defendant to keep the space aforesaid at all times well paved and in good order,

and without regard to its, the defendant's, rights and interests in the performance and discharge of such duty. And the defendant further says that the said claim was without authority of law and null and void, but that the said Board insisted thereon, and in execution thereof and without any notice to the defendant from the plaintiff or the said Board, or other agent of the plaintiff, to perform and discharge its said duty, and in denial of the said duty of the defendant and its rights and interests in the performance and discharge of said duty, and notwithstanding the whole of the aforesaid space was well paved and in good order, in violation of law made divers contracts for the paving of the streets and avenues aforesaid, including as well the aforesaid spaces as the residue of the said streets and avenues; and that in pursuance of such contracts new pavements of unfit materials and at exorbitant and unreasonable cost were laid down.

And the defendant says that at its own expense it from time to time changed its railroad so as to make it conform to changes in the grades or other changes in said new pavements.

And the defendant further says that the spaces between the tracks of the defendant's railroad and the space embraced within two lines drawn two feet from the outer rails of its tracks and running parallel with said rails, wherein said new pavements were laid, were, when said new pavements were laid, well paved and in good order, but that the pavement in the aforesaid spaces and between the aforesaid lines was dug up by the said Board and new pavement substituted.

And the *plaintiff* further says that no notice was given by the plaintiff or the said Board or other agent of the plaintiff to the defendant to lay down said new pavements in the aforesaid
47 spaces and between the aforesaid lines, nor was it claimed by the plaintiff or the said Board or other agent of the plaintiff that the defendant was in default in failing to lay down such new pavement, nor was any opportunity ever afforded the defendant to lay down the same, but on the contrary the duty of the defendant to lay down the same was denied, and the cost of the said work was charged in the same manner as if the defendant had not been charged with any duty in the premises, and remained so charged for many years, to wit, until the 6th day of August, 1878.

2. And for a further plea the defendant says that by its charter there was imposed upon it the duty to change the locality of its railroad so as to conform to changes which might be made in the grades or otherwise in the streets and avenues of the city of Washington, and, further, to keep the spaces embraced within two lines drawn two feet from the outer rails of its tracks and running parallel with its said rails at all times well paved and in good order, without expense to the United States or the cities of Washington and Georgetown.

And the defendant says that at the different times mentioned in the declaration when the work, the cost whereof is alleged to be chargeable to the defendant, was done in the following-named avenues and streets of those described in the declaration, to wit, First street west; Ninth street north; Boundary street, from Ninth to Seventh streets northwest; "P" street northwest; Connecticut avenue; East Capital

street; West street, Georgetown; High street, Georgetown; Second street, Georgetown, the defendant's railroad had not been constructed through, along, or in said streets or avenues, or either of them, nor had the rails of the defendant's railroad been laid down through, along, or in said streets or avenues, or either of them, nor had the defendant used, occupied, or taken possession of the said streets and avenues, or either of them, for the purpose of constructing their said railroad.

48 And the defendant further says that its said track was constructed and its rails laid and its cars began to run through and along the aforesaid streets and avenues after the contracts were made by the said Board of Public Works for the paving of said streets and avenues, and after the work was done, the cost whereof is alleged to be chargeable to the defendant, and that it is not responsible or liable for any work done or materials furnished in the paving of said streets before its rails were laid in said streets and avenues and before its cars began to run on said streets and avenues.

And the defendant says no notice was given to the defendant by the plaintiff or the said Board, or other agent of the plaintiff, to the defendant, to lay down said pavements on the said streets and avenues in this plea described, or either of them, nor was it claimed by the plaintiff or by the said Board, or other agent of the plaintiff, that the defendant was in default in failing to lay down such pavement, nor was any opportunity ever afforded the defendant to lay down the same, but, on the contrary, the duty of the defendant to lay down the same was denied, and the cost of the said work was charged in the same manner as if the defendant had not been charged with any duty in the premises, and remained so charged for many years, to wit, until the sixth day of August, 1878.

3. And for a further plea the defendant says that the plaintiff did not in the due exercise of its power, and pursuant to law, order and direct that the said streets and avenues should be repaired and improved as alleged.

4. And for a further plea the defendant says that the plaintiff did not in fact order and direct that the said streets and avenues should be repaired and improved as alleged.

5. And for a further plea the defendant says it admits that
49 pursuant to its charter it was bound to change its railroad so as to make it conform to changes in the grades of the said streets and avenues; and the defendant says that when in the work done by the plaintiff after the defendant had constructed its road and laid its tracks thereon on the said streets and avenues described in the declaration changes were made in the grades, the defendant in all instances promptly and faithfully discharged its duty in the premises by changing its railroad so as to make it conform to said changes in the grades, and that said changes of its railroad were made at its own expense and without any expense to the plaintiff.

6. And for a further plea the defendant says that it was not the duty of the defendant to pave the alleged space in conformity with the plans prescribed by the plaintiff as alleged, but that it was the duty of the defendant at all times after it had constructed its road

and laid its tracks thereon to keep at all times well paved and in good order the spaces hereinbefore described in the streets and avenues aforesaid without expense to the United States or the cities of Georgetown and Washington, which duty the defendant says it faithfully performed and discharged.

7. And for a further plea the defendant says that it never received any notice to pave the alleged space in conformity with the plans prescribed by the plaintiff as alleged, but that, on the contrary, the plaintiff claimed that it was its right and duty so to pave, and denied the right and duty of the defendant in the premises.

8. And for a further plea the defendant says that the plaintiff was not obliged to make, as alleged, the repairs and improvements with the cost whereof it is sought in this action to charge the defendant because of any default or neglect of duty by the defendant to make the same, but that the same were voluntarily made by the plaintiff under a claim of right to make the same and irrespective of any duty of the defendant or of its default or neglect therein.

9. And for a further plea the defendant says that the plaintiff did not grade and pave as alleged, and that the alleged cost is not just and reasonable, and that the plaintiff has not paid the alleged sums of money wherewith it seeks to charge the defendant.

10. And for a further plea the defendant says that it did not undertake and promise in manner and form as the plaintiff has above complained.

11. And for a further plea the defendant says that the plaintiff ought not to have and maintain its action aforesaid against it, because it says that the said action being for indemnity and reimbursement for moneys expended by the plaintiff, and not for the defendant's failure and neglect to perform duties imposed upon it by law, the said defendant did not at any time within three years next before the commencement of this suit undertake or promise in manner and form as the said plaintiff hath above thereof complained against it; and this it is ready to verify; wherefore it prays judgment, &c.

12. And for a further plea the defendant says that the plaintiff ought not to have and maintain its action aforesaid, because it says that the said several supposed causes of action in the said declaration mentioned being for indemnity and reimbursement for moneys expended by the plaintiff, and not for the defendant's neglect and failure to perform duties imposed upon it by law, the said several supposed causes of action did not, nor did either of them or any of them, accrue to the said plaintiff at any time within three years next before the commencement of this suit in manner and form as the plaintiff hath above complained; and this it is ready to verify; wherefore it prays judgment, &c.

NATH'L WILSON,
Att'y for Def't.

51 In the Supreme Court of the District of Columbia.

Filed April 8, 1884. R. J. Meigs, Clerk.

THE DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY. } At Law. No. 22458.

1. The plaintiff joins issue upon each and every one of the defendant's first ten (10) pleas in its behalf plead.

2. The plaintiff says that the defendant's eleventh and twelfth pleas are bad in substance.

A. G. RIDDLE,
Attorney for Plaintiff.

NOTE.—Among the matters of law to be argued in support of the above demurrer is the following:

That the nature of the case is such that the statute of limitations as plead does not apply.

THE DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY. } At Law. No. 22458.

The defendant joins issue on the plaintiff's demurrer to its eleventh and twelfth pleas, respectively, to the plaintiff's amended declaration.

April 14, 1884.

NATH'L WILSON,
Attorney for Defendant.

52 (19 Min. C. C., p. 124.)

MONDAY, *April* 14, 1884.

Justice Hagner presiding.

THE DISTRICT OF COLUMBIA, Plaintiff,
vs.
THE METROPOLITAN RAILROAD COMPANY, Defendant. } At Law. No. 22458. Cal. 61.

This cause coming on to be heard upon the plaintiff's demurrer to the defendant's pleas of the statute of limitations to plaintiff's amended declaration, and the same having been heard, it is considered by the court that said demurrer be, and the same is hereby, sustained, to which the defendant excepts.

And thereupon comes here as well the plaintiff, by its attorney, Mr. Riddle, as the defendant, by its attorneys, Messrs. Wilson and Davidge, and a jury of good and lawful men of this District, to wit, Joseph L. Coolidge, James B. Hollidge, Jerome McManus, Jasper M. Jackson, William Budd, Andrew J. Biedler, Rodney W. Vandeventer, George W. Hagar, George Seitz, Daniel Luther, Charles J. Gawler, and Joseph W. Hooper, who, being duly sworn to try the issues above joined, are respited until the meeting of the court to-morrow.

53 (19 Min. C. C., p. 133.)

WEDNESDAY, *April* 30, 1884.

Justice Hagner presiding.

THE DISTRICT OF COLUMBIA, Pl't'ff,
vs.
THE METROPOLITAN RAILROAD CO., Def't. } At Law. No. 22458. Cal. 61.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after the case is given them in charge, retire to their room to consider of their verdict, with permission, if they agree during the adjournment of the court, after reducing their verdict to writing, signing, sealing up the same, and delivering the same to their foreman, to separate until the meeting of the court to-morrow morning.

(Min. 19 C. C., p. 133.)

Justice Hagner presiding.

THURSDAY, *May* 1*st*, 1884.

THE DISTRICT OF COLUMBIA, Pl't'ff,
vs.
THE METROPOLITAN RAILROAD CO., Def't. } At Law. No. 22458. Cal. 61.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury return into court, and on their oath say they find the said issues in favor of the plaintiff, and that the money payable to it by the defendant, by reason of the premises, is the sum of one hundred forty-seven thousand five hundred and seven dollars and five cents, besides costs. Therefore, it is considered that the plaintiff recover against said defendant said sum of one hundred forty-seven thousand five hundred and seven dollars and five cents, as aforesaid, being the money payable by it to the plaintiff by reason of the premises, and $ for its costs of suit, and have execution thereof.

In the Supreme Court of the District of Columbia.

Filed May 5, 1884. R. J. Meigs, Clerk.

THE DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY. } At Law. No. 22458.

Motion for New Trial.

And now comes the defendant, by its attorneys, and moves the court to grant a new trial upon the following grounds:

1. Errors of law, as shown by the bills of exceptions taken upon the trial.

54 2. The verdict was rendered upon insufficient evidence.

3. The verdict was against the weight of evidence.

4. The damages found by the verdict are excessive.

5. The charge of the court is upon the facts of the case and argumentative, and culculated to mislead the jury by giving undue prominence to items of evidence in behalf of the plaintiff, and ignoring, or disparaging, others in behalf of the defendant, and generally is such that the opinion of the court as to the facts of the case operated with the jury in aid of the pretensions of the plaintiff.

W. D. DAVIDGE,
NATH'L WILSON,
Attorneys for the Defendant.

No. 22458. Filed July 17, 1884, R. J. Meigs, clerk.

THE DISTRICT OF COLUMBIA *vs.* THE METROPOLITAN R. R. CO.

Stipulation.

It is agreed in the above-entitled cause that the statement of evidence and bills of exception may be prepared and signed *nunc pro tunc* after the adjournment, and that for that purpose the term may be prolonged or the pending motion for a new trial continued.

July 17, 1884.

RIDDLE,
Att'y, D. C.
W. D. DAVIDGE,
Att'y for Def't.

In the Supreme Court of the District of Columbia.

(Filed April 30, 1884. R. J. Meigs, clerk.)

THE DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY. } At Law. No. 22458.

Bill of Exceptions.

At the trial of this cause the plaintiff, a body corporate for municipal purposes, to maintain the issues on its part joined, gave in evidence the charter of the defendant, being an act of Congress entitled
"An act to incorporate the 'Metropolitan Railroad Company
55 in the District of Columbia,'" approved July 1, 1864; and also four amendments of the said charter, being an act of Congress entitled "An act to amend an act entitled 'An act to incorporate the Metropolitan Railroad Company in the District of Columbia, approved July 1, 1864,'" approved January 30, 1865; and an act of Congress entitled "An act to amend an act entitled 'An act to incorporate the Metropolitan Railroad Company in the District of Columbia,'" approved March 3, 1865; and an act of Congress entitled "An act extending the time for the completion of certain street railways," approved March 2, 1867; and an act of Congress entitled "An act relating to the Metropolitan Railroad Company," approved March 3, 1869; copies of of which charter and amendments are hereunto annexed, marked

Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E, and made part hereof.

The plaintiff then read from the first section of the said charter the following provisions:

"*Provided*, That the use and maintenance of the said road shall be subject to the municipal regulations of the city of Washington within its corporate limits."

And also read from the said charter the following sections:

"SEC. 4. And be it further enacted, That the said corporation hereby created shall be bound to keep said tracks, and for the space of two feet beyond the outer rail thereof, and also the space between the tracks, at all times well paved and in good order without expense to the United States or to the city of Washington.

"SEC. 5. And be it further enacted, That nothing in this act shall prevent the government at any time, at their option, from altering the grade or otherwise improving all avenues and streets occupied by said road, or the city of Washington from so altering or improving such streets and avenues, and the sewerage thereof, as may be under their respective authority and control; and, in such event, it shall be the duty of said company to change their said railroad so as to conform to such grade and pavement.

56 "SEC. 6. And be it further enacted, That this act may at any time be altered, amended, or repealed by the Congress of the United States."

The plaintiff then gave evidence tending to prove that the said charter was accepted and the defendant organized thereunder, and that the said amendments were also accepted by said defendant in each case.

It was also admitted by the plaintiff and defendant, for the purposes of this suit, that the defendant was in lawful use with its tracks and cars of the streets and avenues mentioned in the declaration.

The plaintiff then gave in evidence an act of the Legislative Assembly of the District of Columbia, entitled "An act making appropriations for improvements and repairs in the District of Columbia, and providing for the payment thereof," approved July 10, 1871; and also the plan of improvement referred to in the said act, together with the letter of the Board of Public Works and Wm. D. Cassin to said Legislative Assembly; which act, plan, and letters are hereunto annexed, marked Exhibit F, and made part thereof.

The plaintiff then gave evidence tending to prove that in and about the year 1864 the defendant, in pursuance of the authority in the said charter, constructed and laid its railroad in and along the following avenues and streets in the city of Washington: Commencing at the junction of A St. north and New Jersey avenue, at the north side of the Capitol; then along the east side of New Jersey avenue to D St. north, and along D St. north and C St. north and Indiana avenue to the intersection of D street north with Indiana avenue; along Indiana avenue, D street north, and Louisiana

avenue to Fifth street west; along Fifth street west to F street north; along F street north to Fourteenth street west; along Fourteenth street west to H street north; along H street north to Seventeenth street west, and along Seventeenth street west to New York avenue; and
57 thereafter used and operated the said railroad, and that the defendant, when it so constructed and laid its railroad in said avenues and streets, at its own expense paved with blue and cobblestones the space within the exterior rails of its railroad and for two feet outside, being the spaces mentioned in the fourth section of the said charter, and thereafter, at like expense, kept and maintained the said spaces well paved and in good order until the pavements laid in the said spaces were removed by the plaintiff, so as to lay the new pavements hereinafter mentioned.

The plaintiff then read from the minutes of the Board of Public Works, a body created by the act of Congress, entitled "An act to provide a government for the District of Columbia," approved February 21, 1871, certain entries tending to prove that the said Board at divers time awarded to divers parties contracts for improving, grading, and laying down new pavements in the avenues and streets mentioned in the declaration; and that, in pursuance of such awards, contracts were entered into with different parties, under which contracts new pavements were laid in the avenues and streets in the declaration mentioned; that all the said contracts called for and required the laying of new pavements from curb to curb in the avenues and streets to be improved, without any reference to the railroad of the defendant, or any duty on the part of the defendant in relation to the said pavements, or any of them. The dates of the said awards and contracts, and the contract prices, were as set forth in the tabular statement hereunto annexed, marked Exhibit G, and made part hereof.

The said awards and contracts were given in evidence against the objections of the defendant, made severally when the said awards and contracts were severally offered and severally overruled, and the defendant from time to time excepted. A copy of the said awards, in substance, and a copy of the said contracts are hereunto annexed, marked Exhibit H and Exhibit I, and made part hereof.

58 The plaintiff further gave evidence tending to prove that the pavements, for which contracts were awarded and executed as aforesaid, were laid in the avenues and streets named in the declaration and were of the materials and were finished at the times laid in the declaration, and that all the said pavements as laid extended from curb to curb, embracing the space within the exterior rails of the defendant's railroad and two feet beyond on each side, being the spaces mentioned in the fourth section of the charter of the defendant; that when in the performance of the work, under the said contracts, a change in the grade of the railroad of the defendant became necessary, by reason of an alteration of the grade of the street by the plaintiff, the said change was made from time to time by the defendant at its own expense, and that the only work done by the plaintiff, whereof the cost is sought to be recovered in this action, is the work done in the said spaces; that when the

said act of the Legislative Assembly of the District of Columbia, approved July 10, 1871, was passed, the defendant had not constructed and laid its railroad in nor entered upon nor used in any manner any avenue or street, save those hereinbefore specifically mentioned in which the said railroad was constructed and laid in about the year 1864; that when the contracts were awarded, and also when they were entered into as aforesaid, for laying the said new pavements in East Capitol street, First street east, Ninth street west, Connecticut avenue, and other avenues and streets in the city of Washington, ond other streets in Georgetown the defendant had not constructed and laid its railroad in the said avenues and streets, nor in any way entered upon or used the same, but that in the progress of the work of laying pavements under the respective contracts in the said avenues and streets the defendant intending to extend its railroad into and along the said avenues and streets, and with the permission of the said Board of Public Works granted at the written request of the defendant, and in order to prevent the tearing up of said avenues and streets in the future from time to time, as the work of paving said streets and avenues by plaintiff was in progress, laid in the said avenues and streets the cross ties and stringers for its railroad, and subsequently and at different times after the said new pavements in the said avenues and streets were completed, being the same involved in this action, laid the rails of the said railway, and thereafter used and operated the said railroad in the said avenues and streets.

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The plaintiff then called as a witness Wm. O. Roome, and by him gave evidence tending to prove that he was before 1878 and still is in the employ of the plaintiff, and that after the passage of the act of Congress, approved June 19, 1878, and on or about the 19th of July, 1878, the Commissioners of the District of Columbia directed a general revision of the assessments, and that the said revision was continued under the act of June 27, 1879, and that in making the said revision the witness acted at first as an assistant, but afterwards had charge of and completed the said revision; that in revising the said assessments the witness was guided and governed exclusively by the contracts, vouchers, and papers of the plaintiff; that before the said revision there was no assessment nor other charge whatever against the defendant on account of any of the pavements laid in the avenues and streets mentioned in the declaration, except in two instances hereinafter mentioned, in which instances the defendant was assessed, on account of this railroad, as the owner of property abutting upon the avenue or street for the alleged cost of laying pavements in the spaces mentioned in the fourth section of said charter; that, except in these instances, by the original assessments made from time to time as the work of laying a pavement was completed, one-third of the cost of the pavement was assessed against the lots fronting upon the avenue or street paved, being one-sixth on each side, and the other two-thirds were assessed to the plaintiff; that in the revision the cost of paving the said spaces was assessed against the defendant, and the residue assessed against the abutting lots and the plaintiff, and that

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draw-back certificates were issued to the different owners of lots as required by the said acts of June 19, 1878, and June 27, 1879; that in relieving the said lots and plaintiff, and assessing the defendant, there was not a mere transfer of part of the original charge, but that the elements which entered into the charge were carefully revised, and when erroneous were corrected; that the contract prices included a certain amount for grading, and that when by the measurements it appeared that the grading had not been done within the exterior rails of the defendant's railroad and the two feet beyond, the amount so included was deducted, whereby the contract price was reduced in some instances twenty cents per square yard; that in the said revision the width of the rails was also allowed the defendant; that the different areas of square yards thus assessed against the defendant, and the costs thereof, are those set out in the declaration in the items of work alleged to have been done by the plaintiff; and that said areas and costs were assessed against the defendant in all cases in which, at the time of the work done by said Board of Public Works, it had actually completed and was using and operating its railroad in streets and avenues mentioned in plaintiff's declaration, as also in all cases in which, at the time the work was done by said Board of Public Works, the defendant had actually laid its cross-ties and stringers in said streets and avenues, but had not yet laid its rails, and was not, in fact, using and operating its said railroad, and had not used or occupied said last-mentioned avenues and streets save only for the purpose of laying its cross-ties and stringers, as detailed in the evidence.

The plaintiff then read in evidence the said act of Congress, approved June 19, 1878, entitled "An act to provide for a revision and correction of assessments for special improvements in the District of Columbia, and for other purposes," and also the said act of
61 June 27, 1879, entitled "An act fixing the rate of interest upon arrearages of general taxes and assessments, now due to the District of Columbia, and for a revision of assessments for special improvements, and for other purposes."

The plaintiff further gave evidence tending to prove that the contract prices for laying the different pavements in the avenues and streets in the declaration mentioned, being the prices named in the declaration, were at different times, as the said pavements were completed and measured, paid by the plaintiff in money and its securities, and that thereby the plaintiff had paid the different sums of money alleged in the declaration to have been paid by it; that the said contract prices were just and reasonable, and were most of them in pursuance of a scale of rates established by the Board of Public Works shortly after it organized, and after it had advertized for bids for laying the different kinds of pavement intended to be laid; that the said advertisement was published in a single paper in the city of Washington, but that parties living beyond the District in some instances bid.

The different bids made to the Board were severally offered in evidence, and the defendant from time to time, as they were offered, objected that the same were inadmissible, because the bids were

declarations not made under oath and without any opportunity to cross-examine the respective declarants, but the objection was from time to time overruled, and the court allowed all the said bids to be read to the jury; and to the said rulings the defendant from time to time excepted.

Among the said bidders was Lewis Clephane, then one of the Board of Directors of the defendant, and who was afterwards examined in behalf of the defendant. Among the witnesses examined in support of the reasonableness of the said contract prices were three who had been members of the said Board. It further appeared in evidence, against the timely objection of the defendant,
62 that J. W. Thompson, president of the defendant company, was also a member of the Legislative Assembly of the District of Columbia at the time of the adoption of the comprehensive plan of improvements while acting as such president, and that S. P. Brown was a member of the Board of Public Works and director of said defendant company, and also that Alexander R. Shepherd was a member of said Board of Public Works, and also one of the original directors of the defendant company.

The plaintiff further gave evidence tending to prove that after the aforesaid revision, and at or about the time mentioned in the amended declaration, a demand was made upon the defendant for the moneys claimed in this action.

The plaintiff then read in evidence the following entries in the minutes of proceedings of the Board of Public Works, and letters written in behalf of the said Board and by the president of the defendant, the said letters to the president of the defendant being read from letter-books of the plaintiff containing impressions of the originals, due notice to produce the originals have been given by plaintiff to the defendant. The genuineness of said entries and letters was admitted by the defendant, but the same were severally objected to as irrelevant.

MAY 20, 1872.

J. W. THOMPSON, Esq.,

President of the Metropolitan R. R. Company.

SIR: L. S. Filbert has been instructed to remove the cobble-stones from between the railroad tracks on New York avenue, between 14th and 15th streets, and at the intersection of 14th street and New York avenue, and to (I think it is) "repave the same with the same pavement as in the rest of the street." You will confer a favor by affording him all the facilities in your power for the speedy completion of the work.

Very respectfully,

ALEX. R. SHEPHERD,
Vice-President.

63 MAY 21, 1872.

JOHN W. THOMPSON, Esq.,
President of the Metropolitan R. R. Company.

SIR: The following order, adopted by the Board this day, is respectfully submitted to your information:

Ordered, That the use of the rail known as the crescent rail, such as is used by the Columbia Railroad Company, of this city, be, and the same is hereby, prohibited in the streets and avenues of the cities of Washington and Georgetown, and that the railroad companies now engaged in putting down such rails be, and are hereby, requested to remove them forthwith, and substitute such rails as will not interfere with travel or vehicles; the rails to be removed within thirty days.

ALEX. R. SHEPHERD,
Vice-President.

MAY 31, 1872.

J. W. THOMPSON, Esq.,
President Metropolitan R. R. Company, Washington, D. C.

SIR: You are hereby notified that G. W. Linville has been awarded a contract for grading and paving the carriage-way of D street from 3rd to New Jersey avenue, and for lowering the track of your railroad to a proper grade.

By order of the Board:

CHARLES S. JOHNSON,
Assistant Secretary.

OFFICE OF THE METROPOLITAN R. R. CO.,
NEW YORK AVENUE AND 17TH ST.,
WASHINGTON, D. C., *June* 25, 1872.

Hon. Board of Public Works.

GENTLEMEN: Observing workmen engaged in breaking up 9th street west, preparatory to repaving, it becomes my duty to inform you that at a recent meeting of the Board of Directors of this company, they instructed the undersigned to make all necessary preparations for laying the timbers of a double track railway authorized by act of Congress to be laid along said street, so that the
64 bed of the railroad might be laid simultaneously with the improvement of the Board of Public Works, and thus avoid the subsequent breaking up of the street. The undersigned is now ready, in accordance with the order of the directors, to proceed with the work of construction, and requests that you will give such instructions to your engineer and contractor as will enable him to proceed intelligently as respects the grade, and prosecute the work in accordance with the wishes of your Board, and without inconvenience or delay to your contractor.

Very respectfully yours, &c.,

JOHN W. THOMPSON,
President.

JUNE 27, 1872.

JOHN W. THOMPSON, Esq.,
President Metropolitan R. R. Co.

SIR: Referring to your communication of June 25, 1872, stating the Metropolitan R. R. Company are ready to proceed with the work of laying the timbers for double track of railroad up 9th street northwest, and requesting the Board to give such instructions to the chief engineer and contractor as respects the grades, &c., I am instructed to inform you that the chief engineer has been directed to give all the necessary information and instructions, and you are requested to use every effort to have the track laid on 9th street as soon as possible, so as not to retard the balance of the work on said street.

By order of the Board:

CHARLES S. JOHNSON,
Assistant Secretary.

JUNE 27, 1872.

J. W. THOMPSON, Esq.,
President Metropolitan R. R. Company.

SIR: You will please advise the Board at your earliest convenience whether you intend to allow the railroad track on 17th street, between I and K streets northwest to remain. If not, you will confer a favor by having it removed at once, as the Board desire to comlete the improvement of said street as soon as possible.

By order of the Board:

CHARLES S. JOHNSON,
Assistant Secretary.

65 JULY 22, 1872.

Hon. J. W. THOMPSON,
President Metropolitan R. R. Company.

DEAR SIR: I am in receipt of a communication from the contractors for paving 9th street, complaining that they are delayed by the laying of the tracks of the Metropolitan R. R. Company. Can you not put on a larger force and rush it through, as we have them bound up to finish within a certain time, and any delay permitted by us will release them from such obligation. I shall be obliged if you will give this your personal attention.

Very respectfully,

ALEX. R. SHEPHERD.

JULY 23, 1872.

J. W. THOMPSON, Esq.,
President Metropolitan R. R. Company.

SIR: The contractor for paving B street from 3d street to New Jersey avenue finds it impossible to get along as rapidly as he should with your railroad track remaining in the street. I would suggest to you the putting in of a switch, and running on the other track

for a few days, in order that this work can be completed without delay, which is very desirable for both your company and the Board.

Be pleased to give this matter your early attention.

Very respectfully,

ALEX. R. SHEPHERD.

OFFICE OF THE METROPOLITAN R. R. COMPANY,
NEW YORK AVENUE AND 17TH STREET,
WASHINGTON, D. C., *August* 22, 1872.

To the Honorable the Board of Public Works.

GENTLEMEN: Having learned this morning by a visit to East Capitol street that said street is being graded and paved, you are respectfully informed that pursuant to resolution of the Board of Directors of this company, the substance of which was stated in my communication to your honorable Board of the 25th of June, and received its approval, in reference to 9th street, I propose to lay the timber for a double track railway, authorized by act of Congress, along East Capitol Street, simultaneously with its improvement, under your direction, so as to avoid the necessity of disturbing the pavement after it shall have been laid, and I have the honor to request that you will give such instructions to your contractors and superintendents as will facilitate this object with respect to the few feet of pavement already laid. I have made satisfactory arrangements with your own contractor to replace such portion thereof as may be disturbed by the laying of our timbers.

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Very respectfully, your obedient servant,

J. W. THOMPSON,
President.

AUGUST 22, 1872.

J. W. THOMPSON, Esq.,
President Metropolitan R. R. Company.

SIR: Your communication of the 22d inst. is at hand, in which you state that you propose to put your track down on East Capitol street in accordance with the terms of your charter. The Board will give the necessary directions to enable you to prosecute the work, and at the same time request that you will not delay it, as the season is growing late, and the work is not as far advanced as it should be. We respectfully request that you will give the necessary instructions for a vigorous prosecution of the work.

Very respectfully,

ALEX. R. SHEPHERD,
Vice-President.

AUGUST 22, 1872.

R. C. PHILLIPS, Esq.,
Chief Engineer of Board of Public Works.

SIR: Mr. J. W. Thompson, president of the Metropolitan R. R. Company, has been informed in writing by me that the Board will give the necessary directions to enable him to lay his track on East

Capitol street in accordance with the terms of his charter. You will see it given him.

Very respectfully,

ALEX. R. SHEPHERD,
Vice-President.

67 OFFICE OF THE CONNECTICUT AVENUE AND PARK R. R. COMPANY,
WASHINGTON, D. C., *August* 23, 1872.

To the Honorable the Board of Public Works.

GENTLEMEN: The Connecticut Avenue and Park Railroad Company, chartered by act of Congress, has been duly organized, and made arrangements for the speedy construction of its railroad. Its contractors, impelled by a proper regard for the preservation of the improvements in course of execution by your Board, have authorized the undersigned, with the courtesy of the Board and its employees, to lay the timbers for a double-track railroad on Connecticut avenue, simultaneously with the progress of the public work under your charge, which information is respectfully communicated to your honorable body, with the request that it will give such instructions to its contractors and superintendents as will afford reasonable co-operation in an object so desirable and so promotive of the general good.

Very respectfully, your obedient servant,

JOHN W. THOMPSON,
President.

SEPTEMBER 4, 1872.

J. W. THOMPSON, Esq.,
President Metropolitan R. R. Co.

SIR: In reply to yours of the 25th ult., stating that the Connecticut Avenue Railroad Company authorized you to lay timber for a double-track railroad, simultaneously with the progress of the public work, you are informed that there is no objection to your doing the same, but promptness in pushing the work forward is requested.

By order of the Board:

CHARLES S. JOHNSON,
Assistant Secretary.

OFFICE OF METROPOLITAN RAILROAD COMPANY,
WASHINGTON, D. C., *September* 11, 1872.

To the Honorable the Board of Public Works.

GENTLEMEN: The laying of a railroad track on Connecticut
68 avenue to connect with the Metropolitan road has inspired our fellow-citizens of Georgetown with a hope that said railroad may be deflected and continued over the P street bridge for their accommodation. The distance along P street is only about three ordinary squares. Our local Legislature, in January last, granted a charter for this route to the Union Railroad Company. That company has been merged in the Metropolitan Company.

The interests of all parties and citizens interested being thus united it is respectfully submitted to the Board of Public Works whether a track may be laid over that portion of P street heretofore granted to the Union Company which is necessary to afford to the inhabitants of the upper part of Georgetown ready and convenient means of transit to and from this city by way of P street. If consent be given by your honorable Board, or no objection be interposed, I shall take pleasure in immediately laying the missing link in this line of intercommunication, and should be pleased to learn whether I can proceed with this desirable work.

An early reply is requested, as the work should be done before the setting in of the bad weather of the autumn months.

Very respectfully, your obedient servant,

J. W. THOMPSON,
President.

(Endorsed:) Respectfully returned, with the opinion that in case a railroad is laid across P street bridge it will interfere seriously with the value of the street as an outlet for vehicles. If laid it should have but one track, and be laid in the center of the street. I do not believe that the street can be kept in passable condition unless the track, and a space outside the same, is well paved, for which purpose I consider the round block preferable. I do not think cobble-stone would stand, unless the entire street was paved. A. B. Mullett. September 22, 1872.

SEPTEMBER 18, 1872.

JOHN W. THOMPSON, Esq.,
President Metropolitan R. R. Company, Washington, D. C.

SIR: I am directed by the Board to state that they would
69 like to have the rails put down on 9th street west as soon as possible, as the stringers are wearing out and are dangerous to horses.

Very respectfully, yours, &c.,

CHARLES S. JOHNSON,
Assistant Secretary.

SEPTEMBER 23, 1872.

J. W. THOMPSON, Esq.,
President Metropolitan R. R. Company.

SIR: Your attention is respectfully invited to the fact that the temporary strips of wood nailed to the timbers of the 9th street railroad have become so worn as to admit of water under the abraded edges of the concrete, threatening much damage thereto. It is therefore suggested and requested that you cause strips of wood, not less than four inches wide and of a suitable depth, to be placed parallel with and beneath the rails and concrete, which it is believed will support and protect the latter.

By order of the Board:

CHARLES S. JOHNSON,
Assistant Secretary.

I also desire to call your attention to your track on 1st st., between A and East Capitol streets.

I propose to put a large force on about one week from Monday on this end of this improvement, and you will have to either take up your track or move it close to the iron fence which encloses the park. I propose to work 250 carts in this end of the cut and on East Capitol street, and to finish that grading in fifteen days from the time we start it. It will be to your interest as well as the Board to have this finished at once, for if it runs into the winter or we should have a wet fall it will be impossible for you to get along.

Please see to this at once, and let me know what you think of it.

Yours truly,

ALEX. R. SHEPHERD,
V.-P. Board Public Works.

SEPTEMRER 3, 1873.

J. W. THOMPSON, Esq.,
President Metropolitan R. R. Company.

SIR: I am directed by the Board to notify you that the contractor is all prepared to push forward the improvement of F street, between 9th and 15th streets, which work it is desirable to finish with every possible dispatch, but is delayed by the stone between your railroad track. If you desire to retain these stone you will remove them at once; otherwise they will be taken charge of by the Board.

You will also take measures to have your track lowered where necessary without any delay.

Very respectfully,

CHARLES S. JOHNSON,
Assistant Secretary.

73 SEPTEMBER 8, 1873.

J. W. THOMPSON, Esq.,
President Metropolitan R. R. Company.

SIR: I am directed by the Board to request you to have your track on B street north and 1st street east put in order, so that the work of concreting can be proceeded with at once.

CHARLES S. JOHNSON,
Assistant Secretary.

SEPTEMBER 19, 1873.

J. W. THOMPSON, Esq.,
President Metropolitan Railroad Company.

SIR: In reply to your communication of yesterday, I am directed to inform you that the contractor for the improvement of Dunbarton street, Georgetown, Mr. Kepple, has been instructed to expedite his work, so that the track of your railway can be laid without delay. You can then connect by running an inclined plane at the intersection of Congress street. This is deemed the most expedient method for temporary purposes.

Very respectfully,

CHARLES S. JOHNSON,
Assistant Secretary.

OCTOBER 2, 1873.

J. W. THOMPSON,
President Metropolitan Railroad Company.

SIR: I am directed by the Board to inform you that the contractor for the concrete pavement on Ninth street northwest, who has been directed to repair the said pavement between the railroad track on that street, complains that, owing to the unevenness and irregularity of the rails, it is impossible to lay the pavement by them, as no proper grade can be obtained.

You are requested to rectify the difficulty complained of at once, as it is desirable that the necessary repairs should be made upon this pavement without delay.

Very respectfully,

EDWIN JOHNSON,
Chief Clerk.

74 WASHINGTON, D. C., *October* 23, 1873.

Hon. Board of Public Works.

GENTLEMEN: Permission is respectfully asked of your honorable body to open portions of the following named streets in order to lay tracks of this company: 3d street, in Georgetown, from Fayette to High street, and High street from 3rd to West street, and P street, in Washington, from the Circle to the switch of this company.

Very respectfully, your obedient servant,

J. W. THOMPSON,
President.

OCTOBER 24, 1873.

Hon. J. W. THOMPSON,
President Metropolitan R. R. Company.

SIR: I am directed to say in reply to your communication of yesterday, requesting permission to open certain streets in Washington, in order to lay tracks of the Metropolitan Railroad Company, that it would be necessary for you to furnish the Board with a copy of your charter before permission can be granted.

CHARLES S. JOHNSON,
Assistant Secretary.

OCTOBER 24, 1873.

Hon. J. W. THOMPSON,
President Metropolitan R. R. Company.

SIR: I am directed to say in reply to your communication of yesterday, requesting permission to open certain streets in Georgetown, in order to lay the tracks of the Metropolitan R. R. Company, that by reference to act of Congress, entitled "An act to incorporate the Metropolitan R. R. Company in the District of Columbia," passed July 1, 1864, and also an act to amend an act, entitled "An act to incorporate the Metropolitan Railroad Company of the District of Columbia," passed March 3, 1865, it does not appear that any au-

thority exists for laying the tracks of your road upon the streets named.

You will, therefore, please furnish the Board with a copy of
75 the authority under which you claim the right to lay the tracks upon the streets specified in the letter above referred to.

Very respectfully,

CHARLES S. JOHNSON,
Secretary.

WASHINGTON, D. C., *October* 24, 1873.

To the Honorable the Board of Public Works.

GENTLEMEN: In reply to your note of this date, asking for authority under which I claim the right to lay railroad tracks upon the streets named in my request of the 23d inst., I respectfully state that I am acting for the Union Railroad Company, and refer to the first section of the act incorporating said company, as published at page 59 of the Acts of the First and Second Special Sessions of the First Legislative Assembly.

I trust you will excuse me for having overlooked the propriety of communicating this information in my notes of the 23d inst.

Very respectfully, your obedient servant,

J. W. THOMPSON,
President.

OCTOBER 24, 1873.

Hon. J. W. THOMPSON,
President Metropolitan Railroad Company.

SIR: You are respectfully informed, in reply to your letter of the 23d inst., that the Board of Public Works will not prevent the laying of your track on 3d street from Fayette to High street, and High street, from 3d to West street, in the city of Georgetown, and P street, in this city, from the Circle to the switch of your company, provided the pavements on the carriage-ways of the several streets are replaced at the expense of the company, and put in as good condition in all respects as they are at present.

By order of the Board:

CHARLES S. JOHNSON,
Assistant Secretary.

76 NOVEMBER 10, 1873.

J. W. THOMPSON, Esq.,
President Metropolitan R. R. Company.

SIR: I am directed by the Board to request you to have the tracks of your company at the intersection of New Jersey avenue and D street northwest fixed at once, so that the pavement can be finished without delay.

Very respectfully,

CHARLES S. JOHNSON,
Secretary.

NOVEMBER 15, 1873.

J. W. THOMPSON, Esq.,
President Metropolitan Railroad Company.

SIR: I am directed by the Board to inform you that the First National Bank of the City of New York, as the holder of certificate of assessment No. 3384, against the bed or track of the Metropolitan Railroad Company on and embracing part of the roadway of New York avenue, between 9th and 15th streets northwest, issued September 2nd, 1872, for $448.80, has requested a sale of the property against which said certificate has been issued, and to say that the Board has accordingly adopted a resolution authorizing an advertisement and sale after the 20th instant unless the amount due is paid on or before that day. It is hoped that the amount will be adjusted without requiring the Board to advertise the property for sale.

Very respectfully,

CHARLES S. JOHNSON,
Secretary.

DECEMBER 18, 1873.

J. W. THOMPSON, Esq.,
President Metropolitan Railroad Company.

SIR: Inasmuch as 14th street, between New York avenue and H street northwest, has been newly paved with asphalt, I am directed by the Board to request you to have the space between the tracks of your railroad repaved, so as to conform to the new grade, as the present condition is unsightly, and even dangerous.

Very respectfully,

CHARLES S. JOHNSON,
Secretary.

77 JANUARY 5, 1874.

J. W. THOMPSON, Esq.,
President Metropolitan R. R. Company.

SIR: I am directed by the Board to say that the sale of the property of the Metropolitan Railroad, advertised for to-day, has been postponed, and the auctioneer notified to that effect.

Very respectfully,

CHARLES S. JOHNSON,
Secretary.

ENGINEER'S OFFICE, DISTRICT OF COLUMBIA,
WASHINGTON, D. C., *January* 29, 1875.

To the Honorable the Commissioners of the District of Columbia.

GENTLEMEN: I have the honor to return herewith communication of A. R. Shepherd, calling attention to the condition of Boundary street, between 9th and 6th streets northwest. In consequence of the change of grade on Boundary street, between 9th and 6th streets northwest, about $5,000 has been saved directly from the cost of this contract work. I recommended that, in conformity with the decision of the attorney in several cases, this amount be applied to the

improvement of Boundary street, between 6th and 9th streets northwest, in extension of contract No. 1050.

Very respectfully, your obedient servant,

(Signed) R. L. MOXIE,
Lieut. Engineers, U. S. Army, D. C.

(Indorsed.)

OFFICE OF COMMISSIONERS, DISTRICT OF COLUMBIA,
WASHINGTON, *January* 30, 1875.

Respectfully referred to the Engineer, D. C. Approved by order.
WILLIAM TINDALL,
Secretary.

MAY 22, 1875.

THOMAS KIRBY, Esq., *City.*

SIR: In the prosecution of the work under your contract No. 1050, for the improvement of Boundary street, you will substitute Belgian block pavement for macadam on said street from the west building line of 7th street to the west building line of 9th street. You will present this order with your application for measurement.

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Very respectfully,

R. L. HOXIE,
Lieutenant Engineers, U. S. Army, Engineer D. C.

WASHINGTON, D. C., *December* 20, 1873.

Hon. Board of Public Works.

GENTLEMEN: I have received your note of the 18th instant, requesting that the tracks of this company on 14th street, between New York avenue and H street, be repaved in conformity to the new grade of that portion of said street, and in reply respectfully state that the request shall be complied with.

Your obedient servant,

J. W. THOMPSON, *President,*
Per WM. W. MOORE.

WASHINGTON, D. C., *January* 25, 1872.

Honorable A. R. SHEPHERD.

DEAR SIR: I invite your attention to the height of the curbs at the corner of 7th and F streets, the Patent Office and Masonic Hall corners. An examination at that point is desirable to determine the street grade. We have proceeded with the laying of our tracks to this locality in order to be in advance of the contractors, and have so laid our sleepers that when the irons shall be placed upon them the track will be half an inch below the west curb. I should be gratified if your engineer could make the examination to-day, that we may know the grade of our track and finish it at this point, and thus avoid complaint of detention by the contractors.

Yours truly,

J. W. THOMPSON.

The plaintiff further gave in evidence the following letter, written by the President of the defendant to the Board of Public Works,
79 and the resolution of the said Board upon receipt of the said letter. The genuineness of said letter and entry was admitted by the defendant:

OFFICE OF
THE METROPOLITAN RAILROAD COMPANY,
WASHINGTON, *Oct. 26th*, 1871.

To the Hon. Board of Public Works of the District of Columbia.

GENTLEMEN: Your Board having recently ordered the paving of certain streets through which Congress had given this company permission to lay rails whereon to run street cars, we would respectfully ask the privilege to lay down the sleepers and cross-ties as the paving progresses, thereby preserving the streets and avenues from being cut up at a future day in the execution of this work. It is the intention of this Company to extend the Metropolitan railroad westward from its present terminus to Georgetown and eastward to Uniontown, and also lay tracks on 9th street from Pennsylvania avenue to the Boundary and in 4½ street from the City Hall to the Arsenal gate as soon as the property holders along these lines subscribe to additional stock, which it is hoped will be done shortly. The Company are willing, with the permission of the Board, to go on at once and lay the timbers for these lines, fully preparing them for the rails to be put in at some future time. To keep a well-laid pavement in good order it is desirable to avoid all excavation, particularly in the center of the street. This consideration doubtless influenced your Board in its wise precaution of ordering all water, gas, and service-pipes to be laid prior to the paving. The necessity is more apparent, where railroad privileges have been granted, to have the timbers laid as the paving progresses, which will not only be a benefit to the city, but add to the comfort of those residing upon or passing over the street. We are willing to anticipate the putting down of the sleepers and cross-ties of our contemplated extensions, provided the paving be done by your own contractor without charge against us, and should be pleased if the suggestion herein submitted should meet the favor of your Board.

Very respectfully, your ob't servant,

J. W. THOMPSON,
Pres'd't.

80 *Resolved*, That when this Board shall have authorized the paving of a roadway of any street or avenue along which any horse railroad company is empowered to lay a railroad track, such company shall have the privilege of laying, at its own expense, the sleepers, cross-ties, and other woodwork of such track in advance of paving, so as to prepare the track for the rails, and thus prevent the necessity of disturbing the pavement for this purpose at a future time. Said work to be done under the direction of the Board.

October 26, 1871.

The plaintiff then gave evidence tending to prove that the instances in which the defendant was originally assessed, on account of its railroad, as an owner of property as hereinbefore mentioned, were for the pavement laid on Fourteenth street west, at the intersection of New York avenue, and for the pavement laid on Seventeeth street west, from H street north to New York avenue, being three items of work alleged by the declaration to have been done by the plaintiff; that the said assessments were respectively dated September 2, 1872, and November 22, 1872, for $440.80 and $7,852.80; that certificates of indebtedness were made out therefor against the defendant and payment demanded, and that the same were sold by the plaintiff to the First National Bank of New York on or about the year 1873, and notice of such sale given to the defendant, and that the same since the said sale have been and are now held by the said bank; and that the paper hereunto annexed, marked "Exhibit J," and made part hereof, is a true copy of the forms of the said certificates; and that the expense of paving near the tracks in the streets where the rails were laid was greater than the expense in streets where there were no tracks laid; and the plaintiff then rested its case.

It was agreed between parties, respectively, that chapter 140 of act of 40th Congress, 2nd session, approved July 13, 1868, entitled
"An act to incorporate the Connecticut Avenue and Park
81 Railway Company in the District of Columbia," as the same is set forth on pages 85 to 88, Stat. Lar., 15, may be taken and deemed part of this bill as fully as though the same were herein at large set out.

At the close of the evidence of the plaintiff the defendant moved the court for leave to reinstate the pleas of limitation which upon demurrer had been overruled; but the court refused the motion and the defendant excepted.

The defendant then moved the court to instruct the jury that the plaintiff was not entitled to recover; but the said motion was overruled, and the defendant excepted.

And thereupon the defendant, to maintain the issues on its part joined, offered to prove that at and before the passage of the said act of February 21, 1871, the defendant had, so far as it had constructed and laid its railroads, paved at its own expense within the exterior rails and for two feet outside, being the spaces mentioned in section four of its said charter, and had since kept the said spaces well paved and in good order, at its own expense, and that the same were well paved and in good order when the contracts for pavements along the line of the said railroad, so far as then constructed and made, were awarded and entered into and new pavements made thereunder; to which offered evidence the plaintiff objected, and the court sustained the objection, and to the said ruling the defendant excepted.

And thereupon the defendant further offered to prove by John W. Thompson, the president of the defendant company, that in respect of the avenues and streets in which the cross-ties and sleepers of its

railroad were laid in the progress of the work as hereinbefore stated, the defendant, claiming to have under the said act of March 3, 1869, five years from the date of the said act within which to construct and lay its railroad, and under the said act of March 3, 1865, an indefinite time for the extension of its railroad along A street north to First street east, along First street east to East Capitol street, along East Capitol street to Ninth street
82 east, and along Ninth street to L street south, had in good faith determined to avail itself of the delay allowed by law and not to construct and lay its railroad in the said avenues and streets until after the new pavements were laid by the Board of Public Works, and made known such determination to the said Board of Public Works; and that the said board thereupon agreed with the defendant that if the latter would, in the progress of laying the pavements in the said avenues and streets, lay its cross-ties and sleepers and thereby prevent the necessity of tearing up the pavements in the future, when and as the defendant might elect to construct and lay its railroad in the said avenues and streets, that the laying such cross-ties and sleepers at the instance of the said board and entering upon and using for that purpose the said avenues, should not involve any liability on the part of the defendant to pay for any part of the said pavements, but that the said defendant should stand in respect of liability as if the said cross-ties and sleepers had not been laid by it, nor the said avenues and streets entered upon and used for such purposes; and that thereupon the defendant assented to the said agreement, and, confiding in the same, laid at its own expense the said cross-ties and sleepers; and that the letter of the 26th of October, 1871, was written at the instance of the said board, and that the said letter and resolution of the same date were in pursuance of the said agreement intended to carry into effect the same; and the defendant claimed that the said offered evidence was admissible as independent evidence and also as explanatory of the said letter and resolution.

To which offered evidence the plaintiff objected; and the court sustained the objection, and ruled that the said offered evidence was not admissible for any purpose, and refused to allow the said evidence, or any part thereof, to be given to the jury; and to the said ruling the defendant excepted.

And thereupon the defendant gave evidence by the said wit-
83 nesses examined by the plaintiff, who had been members of the Board of Public Works, tending to prove that the Board of Public Works, in the construction of the authority delegated to it by law, claimed that the power and duty was exclusively devolved on it of paving the avenues and streets from curb to curb, including the spaces mentioned in the fourth section of the said charter; and on cross-examination of A. B. Mullett, a witness called in behalf of defendant, he testified that he was a practical engineer, and a member of the Board of Public Works at the time of the doing of the work sued for in this action, and that it was, in his opinion, impracticable to divide the work of paving the spaces included between the concrete lines of the streets and avenues mentioned in the declaration,

and the outer rails of defendant's tracks in said streets and avenues, so as to enable the plaintiff to do the said work up to the imaginary line two feet from the outer rails of the defendant's said tracks, and enable the defendant to do the work of paving the spaces between said imaginary lines and its said outer rails; and in awarding and entering into the said contracts, and in the execution of the work thereunder, acted in pursuance of such claim, and did not make any request or demand upon the defendant to do the work, whereof the costs are claimed in the declaration, nor offered it any opportunity to do the same; that at the commencement of the work on the line of the defendant's railroad, then constructed and laid, the right was claimed by the defendant, when the pavement in the spaces aforesaid laid by the defendant had been taken up on account of a change in grade, to relay the said pavement, which right was denied and refused by the said Board; and that the said Board, in awarding contracts for all pavements to be laid on the line of the defendant's railroad, declared and defined its policy and determination that it would, itself, lay the said pavements over the entire roadway from curb to curb, and with such material as the said Board had selected, and that neither in the laying of the said pavement, nor in
84 the selection of the material to be used, did the defendant take part.

The defendant further gave evidence tending to prove that it never received any request or demand on behalf of the plaintiff, or the said Board, nor had any opportunity afforded to do any part of the work mentioned in the declaration, nor did the said defendant offer to do any of said work sued for, and whereof the costs are sought to be recovered in this action; that the prices paid by the plaintiff for the said work were excessive and exorbitant, being in some instances more than fifty per cent. in excess of the fair and reasonable prices and of the cost of the material and labor, after allowing for all expenses and a reasonable profit to the contractor; that the said contracts were awarded arbitrarily and without competition; that the said scale of rates was established by said Board September 14, 1871, and was excessive and exorbitant, and deviated from by the said Board from time to time; that the same was established after advertisement in a single paper in the city of Washington, calling for rates at which bidders would lay the different pavements, but not giving, or purposing to give, the work in pursuance of such bids, and that the said scale of rates was extravagantly high.

The defendant further gave evidence that the pavements laid by the plaintiff in the avenues and streets alleged in the declaration were utterly unsuitable, and that such as were of wood soon rotted away, and in a short time it became necessary to replace all, or nearly all, with others; and that the cobble-stones, with which the defendant had paved along its railroad as above mentioned, were removed and appropriated and used by the plaintiff, and of the value of which cobble-stones evidence was given.

And thereupon the defendant rested its case.

The foregoing was all the evidence in the cause.

85 The plaintiff then prayed the court to give the following instructions to the jury:

First. The jury is instructed that if they find from the evidence that the municipal authorities ordered and directed that the streets and avenues named in the declaration, and along and over which the tracks of the defendant's railroad are laid, should be repaired and improved by laying down new pavements of wood and concrete, as set forth in the declaration, and that said authorities thereupon entered upon the performance of the said work, and shall further find that the defendant company had notice or knowledge that the said authorities had so ordered and directed, and had entered upon the performance of said work, it thereupon became the duty of the defendant company, without delay, to conform its tracks to the grade of the new work, and to pave its tracks and the space between the same, and also to pave the space of two feet on each side of its outer rails, to conform to the plan and character of the pavement then being laid in said streets and avenues, respectively, by the said municipal authorities; and if the jury shall further find that the defendant company neglected to pave its tracks, and the space between the same and for two feet on each side of the outer rails thereof, and that the said authorities thereupon paved the said spaces, as described in the declaration, and paid the cost of paving the same, then the plaintiff is entitled to recover in this action against the defendant such sum as the jury shall believe was the reasonable cost of performing the said work at the time or times it was done.

Second. The jury is instructed that in determining whether the defendant company had notice or knowledge that the municipal authorities had directed and ordered that new pavements should be laid on the said streets and avenues, and had entered upon the performance of said work, they are authorized to consider,

86 with the other testimony in the case, the testimony to the effect that the defendant, in some instances, changed the grades of its tracks so as to conform to the newly established grade and the new pavement; that its cars were running along its said streets and avenues while the work was progressing; that the defendant was in communication, both written and verbal, with the plaintiff, or its official predecessors, touching the work during its progress; and that the defendant, on at least one occasion, while the work sued for was pending, protested against a change by the plaintiff, or its said predecessors, in the grade of a street in which the defendant's tracks then lay.

The COURT: Gentlemen of the Jury: You are instructed under the first prayer that if you should find that the defendant had notice or knowledge that the District government intended to change the grade, and were doing it, that then the plaintiff is entitled to recover. That is a question that is left for you, as are other facts. I presume it will hardly be insisted on that they had not notice, when their cars were running along all of the tracks. The object of this prayer, however, is simply to show that you can consider all that class of

facts or circumstances in coming to a conclusion whether this company knew that the District government were changing the grades of the streets where their tracks lay and where their cars were running. It may seem strange to you that there should be any doubt about it; but it is a matter of fact, and the facts are for the jury.

Third. The municipal authorities were under no obligation to notify the defendant company that it was expected to pave its tracks, the spaces between the same, and for two feet outside of the outer rails thereof, or to demand that the defendant should perform the said work. As soon as the defendant had notice or knowledge that the municipal authorities had ordered and directed new pavements to be laid in the streets and avenues mentioned in the declaration,
87 and that they were commencing the work, it forthwith became the duty of the defendant to offer itself ready to do the paving, and to proceed to do the same, in such manner as to conform to the altered grade and the character of the said new pavements then being laid by the said authorities; and in the absence of such offer, and upon the neglect of the defendant who commenced the work, it became the duty of the said authorities to perform the same at the reasonable cost of the defendant.

Fourth. Notwithstanding the jury may find that the pavements selected by the municipal authorities, and charged for in this action, were unwisely selected and soon perished, or became unserviceable, the plaintiff will still be entitled to recover what the said work was reasonably worth at the time it was performed.

Fifth. What were reasonable costs and expenses incurred by the plaintiff for doing the work described in the declaration must be determined from all the circumstances of the case. It was not incumbent upon the plaintiff, or its legal predecessors, to do the work by its or their own officers and employés, but the plaintiff, or its said predecessors, properly might procure the work to be done by contract or contracts, and the reasonable charges of those doing the work under such contract or contracts may be recovered in this action.

Sixth. In determining the reasonableness of the rates at which the work sued for in this action was done, the jury may consider, with the other testimony in the cause, any testimony tending to show that the reasonable cost of such work in the space where the defendant's tracks lay, and near the rails thereof, was greater than the reasonable cost of such work in spaces where there were no tracks or rails.

Seventh. The jury is instructed that the plaintiff is enti-
88 tled to recover in this action, at the rates shown by the evidence actually to have been paid by the plaintiff, or its legal predecessors, for the work described in the declaration, unless the jury find from the evidence that such rates were, under all the circumstances, unreasonable; and the burden of showing unreasonableness in such rates is upon the defendant.

Eighth. The plaintiff is not restricted in this action to recovery of merely what it might have cost the defendant to do the work described in the declaration at the times therein stated. The plaintiff is entitled to recover the reasonable expense to it, or its legal prede-

cessors, of doing the said work, due regard being had to all the circumstances of the case, including the character, situation, instrumentalities, and advantages, or want of advantages of the plaintiff, or its said predecessors, in that behalf.

Ninth. The jury is instructed that if it finds from the evidence that the plaintiff, or its legal predecessors, ordered, directed and performed the work described in the declaration, including the paving the defendant's tracks, the space between the same, and the space of two feet beyond each of the outer rails thereof; that the said work was done by the plaintiff, or its said predecessors, through the instrumentality of a contract or contracts with others; that at the time or times of the doing the said work the defendant had notice or knowledge of the ordering, directing, and performing the said work in such manner and through such instrumentality; and that the defendant, so having such notice or knowledge, did not protest against or otherwise attempt to prevent the doing the said work at the prices agreed to be paid, and in fact paid therefor by the plaintiff, or its said predecessors; then the defendant cannot now question or dispute the reasonableness of the said prices in the premises.

89 Tenth. The court is asked to instruct the jury:

That under the 713 section of the Revised Statutes of the District of Columbia, the allowance of interest is a matter of law, and that the only duty of the jury in that behalf is to find the time from which interest in this case is to be computed. That if they find that a demand of payment of the various sums sued for was made by the plaintiff upon the defendant, the date of that demand is the proper time from which interest is to be computed. If no demand was made, then the day on which this suit was commenced is the proper time from which such computation shall be made.

The COURT: In lieu of the tenth prayer, which I have just refused, I will give the same instruction that I gave in the case of the District *vs.* The Washington & Georgetown Railroad, which is as follows:

"The jury is at liberty in their verdict to allow interest from the time of the demand by the plaintiff, as shown in the evidence, upon the sum they may find was the reasonable value of the several items of work laid in the declaration."

And the defendant thereupon severally prayed the court to give to the jury each of the following instructions:

First. The duty imposed upon the defendant by its charter, so far as involved in this suit, was to keep the space embraced within two lines drawn two feet from the outer rails of its tracks, and running parallel with said tracks, at all times well paved and in good order, without expense to the United States or the cities of Washington and Georgetown. The measure of the said duty in relation to keeping the said space at all times well paved and in good order, and the manner of performing the same, depended upon the law of the land, and not upon the discretion or judgment of the plaintiff. And the said duty was owing and to be performed by the defendant;

90 and if from the whole evidence the jury shall find that the defendant did keep the space above mentioned at all times

well paved and in good order, and that notwithstanding the fact that said space was so kept well paved and in good order, the plaintiff did the work for the cost whereof this action is brought, then the plaintiff is not entitled to recover.

Second. If the jury shall find from the whole evideuce that before and at the time the work was done, the cost whereof is sought to be recovered in this action, the space to which the duty of the defendant related was well paved and in good order, and that the said work was notwithstanding done by the plaintiff, then the plaintiff is not entitled to recover in this action.

Third. If from the whole evidence the jury shall find that the pavements, for the cost of part whereof this action is brought, were entirely new, then the plaintiff is not entitled to recover, as the duty of the defendant did not extend beyond repairs.

Fourth. Under the true construction of the charter of the defendant, the duty to keep at all times well paved and in good order the space to which the said duty related, did not require the defendant to lay down new pavements, but was confined to keeping at all times well paved and in good order such pavements as were or might be laid in said space by competent authority.

Fifth. Any right on the part of the plaintiff to discharge the duty of keeping well paved and in good order the space between the outer rails, and two feet beyond depended upon the default of the defendant to discharge such duty. The performance of such duty belonged primarily to the defendant, and the burden of proof is upon the plaintiff to show default on the part of the defendant.

91 Sixth. The passage of the act of the Legislative Assembly, given in evidence, and the adoption of the comprehensive plan therein referred to, did not make it the duty of the defendant to do the work for which a recovery is sought in this action.

Seventh. The orders or awards of the Board of Public Works, awarding contracts for doing the work, for part of which a recovery is sought, did not make it the duty of the defendant to do such work.

Eighth. The passage of the act of the Legislative Assembly of the 10th of July, 1871, and the orders or awards mentioned in the seventh prayer, even if known to the defendant, and followed by knowledge that contracts had been made by the Board of Public Works for the pavements, the cost for a portion whereof is sought to be recovered in this action, and by knowledge that said contracts were in course of execution by the performance of the work therein provided for, did not make it the duty of the defendant to do the work described in the declaration.

Ninth. Even if the duty of the defendant, in respect of keeping well paved and in good order the space between the outer rails of its tracks, and for two feet beyond, was not to be governed in its exercise by the law of the land, but by the discretion of the plaintiff, so that the defendant was bound not only to keep the said space well paved and in good order, but so to keep the same as prescribed by the plaintiff, still the right to do the work in the manner prescribed by the plaintiff belonged to the defendant; and it was not

competent for the plaintiff to do the said work except upon demand to the defendant, and its refusal or neglect to do the same; and if the work, or any part thereof, whereof the cost is sought to be recovered in this action, was not done after such demand of the defendant, and its refusal and neglect, then for the cost of such work or part thereof, the plaintiff is not entitled to recover.

92 Tenth. The plaintiff could not in law become the creditor of the defendant in respect of any work, the doing whereof by law devolved upon the defendant, without demand to the defendant to do the same, followed by refusal or neglect; and the jury are instructed that, unless they find from the evidence that such demand was made and followed by refusal or neglect, the plaintiff is not entitled to recover.

Eleventh. The plaintiff could not in law become the creditor of the defendant in respect of any work, the doing whereof was by law devolved upon the defendant, without a demand upon the defendant to do such work; and the jury are instructed that, unless they find from the evidence that such demand was made, the plaintiff is not entitled to recover.

Twelfth. If, from the evidence, the jury shall find that the plaintiff or the Board of Public Works, in the interpretation of the powers granted to them by law, claimed the right to pave the streets and avenues from curb to curb, and denied that to the defendant belonged the duty and correlative right to pave the space between the outer rails of its tracks and for two feet beyond, and that under and in pursuance of said interpretation the work, for the cost whereof this action is brought, or any part of such work, was done without demand to the defendant or any refusal or failure on its part in pursuance of such demand, then the said interpretation was erroneous, and no right of action accrued to recover from the defendant money expended for work done as aforesaid, notwithstanding the failure to make such demand.

Thirteen. The acts of June 19th, 1878, and June 27, 1879, authorizing the revision of assessments, and the issue of drawback certificates at the instance of the parties mentioned in said acts, ratified and confirmed the assessments as made, subject only

93 to the relief which was provided for by the said acts in behalf of said parties. The said acts did not authorize any revision except at the instance and for the benefit of the said parties, nor the imposition upon the defendant of any amounts remitted and for which drawback certificates issued, nor did the acts give any right of action against the defendant which would not have existed had they simply ratified and confirmed the assessments as made.

Fourteenth. If from the evidence the jury shall find that certain items of charge alleged in the declaration were assessed by the plaintiff against the defendant, and that the certificates of indebtedness given in evidence were issued by the plaintiff against the railroad of the defendant, and were sold for value by the plaintiff to the First National Bank of New York, at or about the time mentioned by the witness Roome, and that the said certificates, amounting in

the aggregate to $7,806.80, are still outstanding, then for the said items of charge the plaintiff is not entitled to recover in this action.

Fifteenth. The plaintiff was not legally entitled to do the work, the cost whereof is sought to be recovered in this action, primarily, but only in the event of default on the part of the defendant; and as there is no evidence to show that such default was communicated to the plaintiff, and that thereupon the plaintiff ordered or directed the said work to be done in consequence of such default, this action cannot be maintained, and the jury must find for the defendant.

Sixteenth. The plaintiff did not succeed to the interests of the cities of Washington and Georgetown in the performance of the duty imposed upon the defendant to keep at all times well paved and in good order the space between the outer rails of its tracks, and for two feet beyond, and hence the plaintiff cannot recover.

Seventeenth. If it be assumed that the plaintiff succeeded
94 to the interest of the cities of Washington and Georgetown in the performance of the duty imposed upon the defendant by its charter to keep at all times well paved and in good order the space between the outer rails of its tracks, and for two feet beyond, still the government created by the act of the 21st of February, 1871, was one of plenary authority. It had the right to construe the charter duty of the defendant and the interest of the plaintiff therein, and the legislation of the plaintiff fails to show that it regarded the new pavements authorized to be laid as within such duty; or that, if it did so regard such new pavements, it took any steps to exact the performance of such duty, or to enable the plaintiff or its agents to do the same by putting in default the defendant.

Eighteenth. The duty imposed upon the defendant by its charter is to keep its tracks, and for the space of two feet beyond the outer rails thereof, and also the space between the tracks, at all times well paved and in good order, without expense to the United States or to the cities of Washington and Georgetown. The defendant is not liable in this action, except when at the time the plaintiff directed a street or avenue to be paved the defendant had laid down and constructed its tracks upon such street or avenue; and the burden of proof is upon the plaintiff to show that at the time of such direction the defendant had laid down and constructed its tracks.

Nineteenth. The laying by the defendant, contemporaneously with the laying of the pavements, of cross-ties and sleepers, under the privilege accorded by the resolution of the Board of Public Works of the 26th of October, 1871, given in evidence, and to prevent the tearing up of the pavements in the future, would not, in the absence of any other use or occupation of any street or avenue by the defendant before the completion of the pavements, render it liable for
95 the discharge of the charter duty to keep well paved and in good order the space to which such duty related, as claimed in this action.

Twentieth. The duty of the defendant to keep well paved and in good order the space to which such duty related was created by act of Congress, and could not be changed or modified by the plaintiff, or its agent the Board of Public Works.

Twenty-first. The said duty was not changed or modified by the act of Congress of February 21, 1871, entitled "An act to provide a government for the District of Columbia."

Twenty-second. According to the proper construction of said duty, as prescribed by law, the defendant was not bound to lay new pavements, but only to keep at all times well paved and in good order pavements already laid.

Twenty-third. If the duty of the defendant, as prescribed by law, extended to the laying of new pavements in the said space, then such duty was not regulated by the judgment of the plaintiff, but the judgment of the law. The defendant was not bound to follow the order or direction of the plaintiff, but had the right, in the exercise of a reasonable discretion, to select the material and do the work, and no other party could select the material or do the work and charge the cost thereof to the defendant, except upon its default to discharge its duty.

Twenty-fourth. If the duty of the defendant extended to the laying of new pavements, and if, further, the defendant was in the selection of the material to be used subject to the judgment of the plaintiff, still the defendant had the right to do the work, and the plaintiff could not do the work and charge the cost thereof to the defendant, except upon its default to do such work.

96 Twenty-fifth. There is no evidence in this cause that the plaintiff claimed that the defendant, by its duty as prescribed, was bound to pave the space in question. If the plaintiff, in its interpretation of its powers and the duty of the defendant, claimed the right to lay the new pavements upon the space in question and from curb to curb, and, acting upon such claim, ordered the work to be done, and the same was accordingly done and paid for by the plaintiff, without demand to the defendant to pave the said space, and its refusal or neglect, after demand so to do, then the said interpretation was erroneous; and for the moneys so paid out in mistake of law and without affording an opportunity to the defendant to discharge its duty, the plaintiff cannot maintain this action.

Twenty-sixth. There is no evidence in this cause that the plaintiff gave any order or direction requiring the defendant to discharge its duty in respect of the space to which such duty related, or in respect of putting the defendant in default as to any such duty, and in the absence of such evidence the plaintiff cannot recover in this action.

Twenty-seventh. According to the proper construction of the order or direction of the plaintiff, the same was subject to the duty and correlative right on the part of the defendant to pave the space to which such duty related, and the refusal on the part of the Board of Public Works to recognize such duty and right, if found by the jury, was illegal and void; and for any money of the plaintiff expended by the said Board for work done in pursuance of such refusal the plaintiff cannot recover in this action.

Twenty-eighth. If the jury shall find that the Board of Public Works, in the execution of the comprehensive plan as given in evidence, assumed to act in exclusion of any right or duty on

97 the part of the defendant to pave the space to which its duty related, and made contracts to pave from curb to curb and including the said space, and declared its fixed determination to do the work itself, wholly irrespective of any right or duty on the part of the defendant; and that such determination was communicated to the defendant, and that any offer on the part of the defendant to do said work would have been unavailing, and the defendant knew such fact, then it was not incumbent on the defendant to make such offer; and if, under the above circumstances, the plaintiff persisted in doing said work, and paid therefor, it cannot maintain this action to recover the reasonable cost of said work from the defendant, notwithstanding, as charged by the court, in the absence of facts, rendering such offer useless, it was the duty of the defendant to offer to do said work in the manner prescribed by the plaintiff.

And thereupon the court severally gave to the jury the first, second, third, fourth, fifth, and sixth prayers offered by the plaintiff, and gave the eighth prayer offered by the plaintiff as modified by striking out the following words, "including the character, situation, instrumentalities, and advantages, or want of advantages, of the plaintiff or its predecessors in that behalf," and substituting therefor, "as disclosed by the testimony," so as to read as follows:

"Eighth. The plaintiff is not restricted in this action to recovery of merely what it might have cost the defendant to do the work described in the declaration at the times therein stated. The plaintiff is entitled to recover the reasonable expense to it, or its legal predecessors, of doing the said work, due regard being had to all the circumstances of the case as disclosed by the testimony."

And severally refused to give the seventh, ninth, and tenth prayers offered by the plaintiff, and gave, in lieu of the said tenth prayer, the following instruction:

"The jury is at liberty in their verdict to allow interest
98 from the time of the demand by the plaintiff, as shown in the evidence, upon the sum they may find was the reasonable value of the several items of work laid in the declaration."

And the court severally refused to give each of the prayers offered by the defendant.

And to the giving of the first, second, third, fourth, fifth, and sixth instructions as prayed by the plaintiff, and of the eighth instruction as modified by the court, and of the said instruction by the court in lieu of the tenth prayer of the plaintiff, and to the several refusals to give each of the prayers offered by the defendant, the defendant severally excepted.

And thereupon the defendant tendered to the court this its bill of exceptions, and prayed that the same should have the same force and effect as to the several rulings therein contained and excepted to as if the said rulings were severally incorporated in different bills of exception, which is by the court allowed; and this bill of exceptions is accordingly, before the jury retired to consider of their verdict, signed and sealed, this thirtieth (30th) day of April, 1884.

A. B. HAGNER. [SEAL.]

99 *Exhibits to Bill of Exceptions.*

EXHIBIT A.

Filed April 30, 1884. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA
vs.
METROPOLITAN RAILROAD COMPANY. } At Law. No. 22458.

CHARTER.

An Act to incorporate the "Metropolitan Railroad Company" in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Alexander R. Shepherd, Richard Wallach, Lewis Clephane, Samuel P. Brown, Nathaniel Wilson, Franklin Tenney, Matthew G. Emery, Samuel Fowler, John Little, J. C. McKelden, Sayles J. Bowen, John H. Semmes, D C. Forney, William W. Rapley, Wm. G. Moore, Thomas Lewis, John B. Keasbey, and Charles H. Nichols, and their associates and assigns, be, and they are hereby, created a body corporate, under the name of the "Metropolitan Railroad Company," with authority to construct and lay down a double-track railway, with the necessary switches and turnouts, in the city of Washington, in the District of Columbia, through and along the following avenues and streets: Commencing at the junction of A street north and New Jersey avenue, at the the north side of the Capitol; along the east side of New Jersey avenue to D street north; along D street north, and along C street north and Indiana avenue to the intersection of D street north with Indiana avenue; along Indiana avenue, D street north, and Louisiana avenue to Fifth street west; along Fifth street west to F street north;
100 along F street north to Fourteenth street west; along Fourteenth street west to I street north; along I street north, across Pennsylvania avenue, to the junction of New Hampshire avenue and Twenty-third street west; thence along New Hampshire avenue to the Circle. Also, a double or single track branch railway, commencing at the intersection of D street north and New Jersey avenue; along New Jersey avenue to Massachusetts avenue; along Massachusetts avenue to H street north; along H street north to Seventeenth street west, intersecting the double-track road.

Also, a double or single track road from the intersection of Fifteenth street west and I street north, connecting with the double-track road at Fifteenth street west; along I street north to New York avenue; along New York avenue to Ninth street west; along Ninth street west to the Washington canal; with the privilege of extending the said branch road at any time along Ninth street west to M street north, along M street north to Twelfth street west, and along Twelfth street west to the Washington canal and Maryland avenue to the Potomac river, with the right to run public carriages thereon drawn

by horse power, receiving therefor a rate of fare not exceeding five cents per passenger, for any distance between the termini of either of the said main railway, or between the termini of either of said branch railways, or between either terminus of said main railway and the terminus of either of said branch railways. *Provided*, That the use and maintenance of the said road shall be subject to the municipal regulations of the city of Washington within its corporate limits.

SEC. 2. *And be it further enacted*, That said road [s] shall be deemed real estate, and they, together with other real property and personal property of said body corporate, shall be liable to taxation, as other real estate and personal property, and to license for their vehicles or cars in the cities aforesaid, except as hereinafter provided; and that all other corporations in the District of Columbia heretofore organized for like purposes, shall be subject to pay license, as provided in this section.

SEC. 3. *And be it further enacted*, That the said railway shall be laid in the center of the avenues and streets (excepting New Jersey avenue, and there it shall be laid as hereinbefore provided for), as near as may be, without interfering with or passing over the water or gas pipes, in the most approved manner adapted for street rail-
101 ways, with rails of the most approved patterns, to be determined by the Secretary of the Interior, laid upon an even surface with the pavement of the streets; and the space between the two tracks shall not be less than four feet, nor more than six feet; and the carriages shall not be less than six feet in width, the gauge to correspond with that of the Baltimore and Ohio Railroad.

SEC. 4. *And be it further enacted*, That the said corporation hereby created shall be bound to keep said tracks, and for the space of two feet beyond the outer rail thereof, and also the space between the tracks, at all times well paved and in good order, without expense to the United States or to the city of Washington.

SEC. 5. *And be it further enacted*, That nothing in this act shall prevent the Government at any time, at their option, from altering the grade or otherwise improving all avenues and streets occupied by said roads, or the city of Washington from so altering or improving such streets and avenues, and the sewerage thereof, as may be under their respective authority and control; and in such event it shall be the duty of said company to change their said railroad so as to conform to such grade and pavement.

SEC. 6. *And be it further enacted*, That this act may at any time be altered, amended, or repealed by the Congress of the United States.

SEC. 7. *And be it further enacted*, That nothing in this act shall be so construed as to authorize said body corporate to issue any note, token, device, scrip, or other evidence of debt to be used as a currency.

SEC. 8. *And be it further enacted*, That the capital stock of said company shall not be less than two, nor more than five, hundred thousand dollars, and that the stock shall be divided into shares of

fifty dollars each, and shall be deemed personal property, transferable in such manner as the by-laws of said company may direct.

SEC. 9. *And be it further enacted*, That the said company shall place first-class cars on said railways, with all the modern improvements for the convenience and comfort of passengers, and shall run cars thereon during the day as often as every four minutes on the route from the Capitol, via the Baltimore and Ohio railroad depot and Departments, to the Circle; and on the other routes once in fifteen minutes each way, and until twelve o'clock at night as
102 often as every half hour; and throughout day and night as much oftener as public convenience may require.

SEC. 10. *And be it further enacted*, That said company shall procure such passenger rooms, ticket offices, stables, and depots at such points as the business of the railroad and the convenience of the public may require. And the said company is hereby authorized to lay such rails through transverse or other streets as may be necessary for the exclusive purpose of connecting the said stables and depots with the main tracks. And the said company is hereby authorized to purchase or lease such lands or buildings as may be necessary for the passenger rooms, ticket offices, stables, and depots above mentioned.

SEC. 11. *And be it further enacted*, That all articles of value that may be inadvertently left in any of the cars or other vehicles of the said company shall be taken to their principal depot, and entered in a book of record of unclaimed goods, which book shall be open to the inspection of the public at all reasonable hours of business.

SEC. 12. *And be it further enacted*, That, within five days after the passage of this act, the corporators named in the first section, or a majority of them, or if any refuse or neglect to act, then a majority of the remainder shall cause books of subscription to the capital stock of said company to be opened and kept open, in some convenient and accessible place in the city of Washington, from nine o'clock in the forenoon till five o'clock in the afternoon, for a period to be fixed by said corporators, not less than two days (unless the whole stock shall be sooner subscribed for), and said corporators shall give public notice, by advertisement in the daily papers published in the city of Washington, of the time when and the place where said books shall be opened. And subscribers upon said books to the capital stock of the company shall be held to be stockholders: *Provided*, That every subscriber shall pay at the time of subscribing twenty-five per centum of the amount by him subscribed to the treasurer appointed by the corporators, or his subscription shall be null and void: *Provided, further*, That nothing shall be received in payment of the twenty-five per centum at the time of subscribing except money: *Provided, further*, That no person shall be allowed to subscribe for more than fifteen thousand dollars. And when the books of subscription to the capital stock of said company
103 shall be closed the corporators named in the first section, or a majority of them, and, in case any of them refuse or neglect to act, then a majority of the remainder, shall, within twenty days thereafter, call the first meeting of the stockholders of said company,

to meet within ten days thereafter for the choice of directors, of which public notice shall be given for five days in two public newspapers published daily in the city of Washington, or by written personal notice to each stockholder by the clerk of the corporation. And in all meetings of the stockholders each share shall entitle the holder to one vote, to be given in person or by proxy.

SEC. 13. *And be it further enacted*, That the government and direction of the affairs of the company shall be vested in the board of directors, seven in number, who shall be stockholders, and who shall hold their office for one year, and till others are duly elected and qualified to take their places as directors. And the said directors (a majority of whom, the president being one, shall be a quorum) shall elect one of their number to be president of the board, who shall also be president of the company; and they shall also choose a treasurer, who shall give bonds with surety to said company, in such sum as the said directors may require, for the faithful discharge of his trust. In case of a vacancy in the board of directors by the death, resignation, and otherwise, of any director, the vacancy occasioned thereby shall be filled by the remaining directors.

SEC. 14. *And be it further enacted*, That the directors shall have full power to make and prescribe such by-laws, rules, and regulations as they shall deem needful and proper, touching the disposition and management of the stock, property, estate, and effects of the company, not contrary to the charter, or to the laws of the United States and the ordinances of the city of Washington: *Provided*, That there shall be no regulation excluding any person from any car on account of color.

SEC. 15. *And be it further enacted*, That there shall be an annual meeting of the stockholders, for choice of directors, to be holden at such time and place, under such conditions, and upon such notice, as the said company in their by-laws may prescribe; and said directors shall annually make a report in writing of their doings to the stockholders.

SEC. 16. *And be it further enacted*, That the said company
104 shall have at all times the free and uninterrupted use of the roadway. And if any person or persons shall willfully and unnecessarily obstruct or impede the passage on or over sail railway, or any part thereof, or shall injure or destroy the cars, depot stations, or any property belonging to said railway company, the person or persons so offending shall forfeit and pay for every such offence the sum of five dollars to said company, to be recovered and disposed of as other fines and penalties in said cities; and shall remain liable, in addition to said penalty, for any loss or damage occasioned by his, her, or their act, as aforesaid; but no suit shall be brought unless commenced within sixty days after such offence shall have been committed.

SEC. 17. *And be it further enacted*, That unless said corporation shall make and complete their said railways between the Capitol and Seventeenth street west within four months after the company shall have been organized, and the railways on the other routes herein described within one year after the company shall have been

organized, then this act shall be null and void, and no rights whatsoever shall be acquired under it.

SEC. 18. *And be it further enacted*, That all acts and parts of acts heretofore passed which are inconsistent with any of the provisions of this act, for the purposes of this act, hereby repealed, so far as the same are inconsistent herewith.

SEC. 19. *And be it further enacted*, That each of the stockholders in the Metropolitan Railroad Company shall be individually liable for all the debts and liabilities of said company, to an amount equal to the amount of stock held by such stockholder.

SEC. 20. *And be it further enacted*, That the said railroad company shall keep in good repair and in clean condition the flagstones or cross-walks leading to, upon, and over their tracks at the crossings of the several streets which intersect their railroad, removing therefrom snow and ice, as well as mud, dirt, or other annoyance; and shall further, whenever necessary to render such crossings dry and convenient, raise or elevate the same sufficiently for that purpose, and shall adjust the adjoining pavement so as to make it convenient for carriages to pass said crossings.

SEC. 21. *And be it further enacted*, That for each and every violation of the foregoing provisions, the said company shall forfeit and pay a sum not less than five dollars and not more than one
105 hundred dollars, which may be recovered, with costs of suit, on complaint of any person aggrieved, in any court of competent jurisdiction in the District of Columbia. Such action may be prosecuted in the name of the city of Washington, and one-half of the penalties recovered shall be for use of the city of Washington, and the other half for the use of the complainant: *Provided, however*, That any party complainant shall, before such action, file with the clerk of the supreme court of the District of Columbia, a bond to be approved by the clerk of the said court, with at least one surety, to be approved by said clerk, and in a penalty of one hundred dollars, conditioned that the complainant shall well and truly save harmless, and indemnify the said city against the payment of all costs and charges which shall be recovered against said city by reason of the failure of the complainant to prosecute or maintain his said complaint.

SEC. 22. *And be it further enacted*, That the said railroad company shall, by the fifteenth day of January, after the completion of said road, and annually on or before that day thereafter, transmit to Congress a full report of the affairs, business, and condition of the said company for the year terminating December thirty-one preceding such report, and such report shall be signed and sworn to by the president and treasurer of the company, or by a majority of the directors, and shall specify the following items:—

First. Capital stock fixed by charter.

Second. Capital stock subscribed and actually paid in, in cash.

Third. Dividends made to stockholders on the capital stock of the company, and when made.

Fourth. Total capital stock at the termination of the previous year.

Fifth. Funded debt of the company, and in what way secured.

Sixth. Floating debt of the company.
Seventh. Total indebtedness of company, exclusive of capital.

Cost of Road:

Eighth. Total costs of rails, chairs, spikes, and other iron used in construction.
Ninth. Total cost of ties, stringers, and other wood or timber used in construction.
106 Tenth. Cost of paving-stone, gravel, and other material used in construction not above enumerated.
Eleventh. Cost of labor in the construction of the road.
Twelfth. Cost of engineering and salaries paid to officers and agents of the company, and discount or interest paid on loans.
Thirteenth. Amount expended in repairs of road.

Cost of Equipment:

Fourteenth. Number and cost of cars.
Fifteenth. Number of horses or mules used in the service of the road, and cost.
Sixteenth. Cost of harnesses and other appointments.
Seventeenth. Cost of tools and fixtures, including furniture of offices.
Eighteenth. Cost of real estate and improvements thereon by the company.

Characteristics:

Nineteenth. Total length of roads, measured at single track, including switches and turnouts.
Twentieth. Weight and character of rail.
Twenty-first. Number of passengers carried during the year.
Twenty-second. Average number of passengers per trip.

Income of Road:

Twenty-third. Total receipts from passengers.
Twenty-fourth. Total receipts from other sources, and what sources.

Expenses of Operation and Maintenance of Road:

Twenty-fifth. Amount of salaries paid to officers of the company.
Twenty-sixth. Amount paid to employees, with the number each of clerks, conductors, drivers, station-keepers, and laborers.
Twenty-seventh. Amount paid for taxes of all kinds and insurance.
Twenty-eighth. Amount paid for reconstruction of, and repairs to, track, turnouts, and other structures.

107 Miscellaneous:

Twenty-ninth. Amount of dividends paid during the preceding year, in cash, and dividends in stock to stockholders, and percentage of each.
Thirtieth. Increase of capital stock, if any, during the year.

Thirty-first. Number of persons killed or seriously injured, on the road during the previous year, and the causes thereof.

SEC. 23. *And be it further enacted*, That it shall be the duty of said company, when said road is completed, to have prepared tickets for passage on their cars, and to keep them at their office for sale by the package of twenty-five, or over, at the rate of twenty-five for the dollar.

Approved July 1, 1864.

Stat. Lar., 13, ch. 190, p. 326.

EXHIBIT B.

Filed April 30, 1884. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA *vs.* METROPOLITAN R. R. Co. } At Law, No. 22458.

"An Act to amend an act entitled 'An act to incorporate the Metropolitan Railroad Company in the District of Columbia, approved July 1, 1864.'"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 17 of the act to incorporate the Metropolitan Railroad Company of the District of Columbia, approved July 1, 1864, be, and the same is hereby, amended so as to extend the time for the completion of their railroad line, except that part thereof between Seventeenth street and the Capitol, for one year from the passage of this act: *Provided, however*, That the line from Seventeenth street and the Capitol be completed, equipped, and running within thirty days from the passage of this act.

Approved January 30, 1865.

Stat. Lar., 13, ch. 25, p. 426.

108 EXHIBIT C.

Filed April 30, 1884. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA *vs.* METROPOLITAN R. R. Co. } At Law. No. 22458.

"An Act to amend an act entitled 'An act to incorporate the Metropolitan Railroad Company in the District of Columbia.'"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act to incorporate the Metropolitan Railroad Company in the District of Columbia," approved July 1, 1864, be, and the same hereby is, amended as hereinafter set forth, namely, that the first section be, and hereby is, amended by striking out all after the words "along H street north to Seventeenth street west, intersecting the double track road," and inserting: also, a double or single track railway, commencing at the

Sixth. Floating debt of the company.
Seventh. Total indebtedness of company, exclusive of capital.

Cost of Road:

Eighth. Total costs of rails, chairs, spikes, and other iron used in construction.
Ninth. Total cost of ties, stringers, and other wood or timber used in construction.
106 Tenth. Cost of paving-stone, gravel, and other material used in construction not above enumerated.
Eleventh. Cost of labor in the construction of the road.
Twelfth. Cost of engineering and salaries paid to officers and agents of the company, and discount or interest paid on loans.
Thirteenth. Amount expended in repairs of road.

Cost of Equipment:

Fourteenth. Number and cost of cars.
Fifteenth. Number of horses or mules used in the service of the road, and cost.
Sixteenth. Cost of harnesses and other appointments.
Seventeenth. Cost of tools and fixtures, including furniture of offices.
Eighteenth. Cost of real estate and improvements thereon by the company.

Characteristics:

Nineteenth. Total length of roads, measured at single track, including switches and turnouts.
Twentieth. Weight and character of rail.
Twenty-first. Number of passengers carried during the year.
Twenty-second. Average number of passengers per trip.

Income of Road:

Twenty-third. Total receipts from passengers.
Twenty-fourth. Total receipts from other sources, and what sources.

Expenses of Operation and Maintenance of Road:

Twenty-fifth. Amount of salaries paid to officers of the company.
Twenty-sixth. Amount paid to employees, with the number each of clerks, conductors, drivers, station-keepers, and laborers.
Twenty-seventh. Amount paid for taxes of all kinds and insurance.
Twenty-eighth. Amount paid for reconstruction of, and repairs to, track, turnouts, and other structures.

107 Miscellaneous:

Twenty-ninth. Amount of dividends paid during the preceding year, in cash, and dividends in stock to stockholders, and percentage of each.
Thirtieth. Increase of capital stock, if any, during the year.

Thirty-first. Number of persons killed or seriously injured, on the road during the previous year, and the causes thereof.

SEC. 23. *And be it further enacted*, That it shall be the duty of said company, when said road is completed, to have prepared tickets for passage on their cars, and to keep them at their office for sale by the package of twenty-five, or over, at the rate of twenty-five for the dollar.

Approved July 1, 1864.

Stat. Lar., 13, ch. 190, p. 326.

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 17 of the act to incorporate the Metropolitan Railroad Company of the District of Columbia, approved July 1, 1864, be, and the same is hereby, amended so as to extend the time for the completion of their railroad line, except that part thereof between Seventeenth street and the Capitol, for one year from the passage of this act: *Provided, however*, That the line from Seventeenth street and the Capitol be completed, equipped, and running within thirty days from the passage of this act.

Approved January 30, 1865.

Stat. Lar., 13, ch. 25, p. 426.

108

EXHIBIT C.

Filed April 30, 1884. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA *vs.* METROPOLITAN R. R. Co. } At Law. No. 22458.

"An Act to amend an act entitled 'An act to incorporate the Metropolitan Railroad Company in the District of Columbia.'"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act to incorporate the Metropolitan Railroad Company in the District of Columbia," approved July 1, 1864, be, and the same hereby is, amended as hereinafter set forth, namely, that the first section be, and hereby is, amended by striking out all after the words "along H street north to Seventeenth street west, intersecting the double track road," and inserting: also, a double or single track railway, commencing at the

intersection of D street north and Four-and-a-half street west, along Four-and-a-half street west to the gate of the Arsenal; also, a double or single track branch railway, commencing at the intersection of Ninth street west and the Washington canal, along Ninth street west to M street north, along M street north to Twelfth street west, and along Twelfth street west to the Washington canal and Maryland avenue to the Potomac river; also, a double or single track branch railway, commencing at the intersection of Massachusetts avenue and H street north, along Massachusetts avenue to K street north, along K street north to the circle, with the privilege of extending the said branch road at any time along K street north to Rock creek, across the bridge over Rock creek to Water street, Georgetown, along Water street, in Georgetown, to Green street, along Green street to Gay street, and along Gay street and First street to Fayette street, Georgetown, with the privilege of extending at any time the road now in operation from Seventeenth street west to the Capitol, from the present terminus of said road on A street north, along A street north to First street east, along First street east to East Capitol street, along East Capitol street to Ninth street east, along Ninth street
109 east to L street south, with the right to run public carriages thereon, drawn by horse power, receiving therefor a rate of fare not exceeding eight cents per passenger for any distance between the termini of either of the said main railways, or between the termini of said branch railways, or between either terminus of said main railway and the terminus of either of said branch railways: *Provided*, That the use and maintenance of the said road shall be subject to the municipal regulations of the city of Washington within its corporate limits.

SEC. 2. *And be it further enacted*, That section eight be, and hereby is, amended by striking out the words "five hundred thousand dollars," and inserting the words "one million dollars:" *Provided*, That the directors of said Metropolitan Railroad Company shall have power to require the subscribers to the capital stock to pay the amount by them subscribed, at such time, in such manner, and in such installments as they may deem proper; and if any stockholders shall refuse or neglect to pay any installments, as required by a resolution of the board of directors, after reasonable notice of the same, the said board of directors may sell at public auction, to the highest bidder, so many shares of said stock as shall pay said installments, (and the highest bidder shall be taken to be the person who offers to purchase the least number of shares for the assessment due,) under such general regulations as may be adopted in the by-laws of said corporation, or may sue for and collect the same in any court of competent jurisdiction.

SEC. 3. *And be it further enacted*, That section seventeen be, and hereby is, so amended as to allow the said corporation three years from the date of the approval of this act in which to complete the railways herein described and those described in the act to which this is an amendment.

SEC. 4. *And be it further enacted*, That the twenty-second section be, and hereby is, amended by striking out the words "at the rate

of twenty-five for one dollar" and inserting the words "at the rate of sixteen for the dollar."

SEC. 5. *And be it further enacted*, That the provision prohibiting any exclusion from any car on account of color, already applicable to the Metropolitan railroad, is hereby extended to every other railroad in the District of Columbia.

Approved March 3, 1865.

Stat. Lar., 13, ch. 119, p. 536.

110 EXHIBIT D.

Filed April 30, 1884. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA
vs.
METROPOLITAN R. R. Co. } At Law. No. 22458.

"An Act extending the time for the completion of certain street railways."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section seventeen of the act to incorporate the Metropolitan Railroad Company, in the District of Columbia, approved July 1, 1864, be, and the same is hereby, still further amended so as to extend the time for the completion of their railroad line, except that part thereof between Seventeenth street and the Capitol, for three years from the first day of January, 1866.

Approved March 2, 1867.

Stat. Lar., 14, ch. 165, p. 440.

EXHIBIT E.

Filed April 30, 1884. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA
vs.
METROPOLITAN R. R. Co. } At Law. No. 22458.

"An Act relating to the Metropolitan Railroad Company."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Metropolitan Railroad Company, in the District of Columbia, be, and is hereby, allowed five years from and after the passage of this act for the completion of its lines of street railways, authorized by the acts of July first, eighteen hundred and sixty-four, and March third, eighteen hundred and sixty-five, anything contained in said act or any other acts to the contrary notwithstanding.

Approved March 3, 1869.

Stat. Lar., 15, ch. 146, p. 339.

111 EXHIBIT F.

Filed Apr. 30, 1884. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA
vs.
METROPOLITAN R. R. Co. } At Law. No. 22458.

An act making appropriations for improvements and repairs in the District of Columbia, and providing for the payment thereof. Approved July 10, 1871. *Comprehensive plan. Letter of W. D. Cassin to Hon. A. R. Shepherd, June* 1, 1871.

AN ACT making appropriations for improvements and repairs in the District of Columbia, and providing for the payment thereof. Approved July 10, 1871.

Be it enacted by the Legislative Assembly of the District of Columbia, That the sum of four millions of dollars is hereby appropriated until the expiration of the first fiscal quarter after the adjournment of the next regular session of the Legislative Assembly, for the improvement and repairs of the streets, avenues, alleys, and roads in the District of Columbia, and for the construction and repairs of sewers, bridges, and other public works therein, to be used and expended according to the provisions of the act of Congress of the United States, entitled "An act to provide a government for the District of Columbia," approved February twenty-one, eighteen hundred and seventy-one, and as fully as may be practicable and consistent with the public interest, in conformity with the plan of improvement submitted to said Legislature by the Board of Public Works of said District, in its communication bearing date June twenty, eighteen hundred and seventy-one.

SEC. 2. *And be it further enacted,* That in no case shall the said board enter into a contract for any work or improvement the cost of which shall exceed the amount estimated therefor in its aforesaid plan, less twenty per centum of said estimates; and that no member of the Council or House of Delegates, or person holding any office of trust or profit under the District of Columbia, shall be pecuniarily interested, either directly or indirectly, in any such contract, and no payment shall be made on account of any contract in which any such person shall be so interested.

112 SEC. 3. *And be it further enacted,* That the appropriation hereby made shall be disbursed upon warrants of said board upon the treasury of the aforesaid District, and in no other manner; and no warrant shall be drawn for any improvement or work, or under any contract therefor, unless the work done and accepted shall be at least ten per centum in excess of such warrant, except in cases of final settlement.

SEC. 4. *And be it further enacted,* That the aforesaid four millions of dollars shall be paid out of the general improvement fund herein provided for, and be charged against the cities of Washington and Georgetown, and the county of Washington, in the proportion of the improvements which shall be made therein, and that special taxes,

in accordance with section thirty-seven of the organic act, shall be levied in sections, wards, or districts of Washington, Georgetown, and the county of Washington, to pay the cost of the particular local improvements which may be made therein, according to the plan of the Board of Public Works aforesaid.

SEC. 5. *And be it further enacted*, That to enable the Board of Public Works to commence and proceed immediately, and until the expiration of the first fiscal quarter after the adjournment of the next regular session of the Legislative Assembly, with the improvements and work hereinbefore mentioned, as hereinbefore provided, the Governor is authorized and empowered, in behalf of the District of Columbia, to issue, or cause to be issued, registered or coupon bonds, designated on their faces "permanent improvement bonds," to an amount not exceeding four millions of dollars, one million and one-half of which may be sold during the year one thousand eight hundred and seventy-one, and two millions and one-half during the period ensuing between the first day of January, one thousand eight hundred and seventy-two, and the expiration of the first fiscal quarter after the adjournment of the next regular session of the Legislative Assembly as before said, in denominations of fifty, one hundred, five hundred, and one thousand dollars; the said bonds to be payable within twenty years from the date of their issue, and to bear interest, payable semi-annually, at the rate of seven per centum per annum. And for the punctual payment of the interest, and the redemption as herein provided, the faith of the government of the District of Columbia is hereby pledged.

SEC. 6. *And be it further enacted*, That the bonds issued in
113 pursuance of this act shall be signed by the Governor, countersigned by the secretary of the District, and tested by the seal of the District, and shall also be countersigned by the comptroller; and said comptroller shall charge to said board the proceeds of the bonds so issued, and shall keep a record of all bonds issued under this act, the date of issue and their amount; and all sales thereof shall be made by the Governor, and the proceeds of such sales shall be deposited in the treasury of the District, and drawn out as herein provided; and neither the said comptroller nor any other officer to whom the custody of said bonds may be entrusted shall issue any one or more thereof, or permit any one or more of them to go out of his possession, except for the purpose and in accordance with the provisions of this act: *Provided*, That no greater quantity of said bonds shall be signed or prepared for issue than is required for the purposes of this act: *And provided further*, That the officer in whose custody such bonds are placed shall give such security for their safe keeping as may be required by the Governor, and he shall make full report from time to time to the Legislative Assembly, showing the amount of sales, and the proceeds thereof, as well as the amount of interest that shall have accrued or have been paid on account thereof.

SEC. 7. *And be it further enacted*, That in order to provide for the payment of the interest and the gradual redemption of the bonds herein authorized, a sum sufficient therefor shall be annually levied

and collected upon the assessed value of property, respectively, in the cities of Washington and Georgetown, and the county of Washington, in the proportion of the improvements which shall be made therein; which sum shall be applied exclusively to the payment of the interest and the redemption of said bonds in the respective proportion as above prescribed.

SEC. 8. *And be it further enacted,* That any officer of this government, or any fiduciary agent or employé thereof, who shall appropriate or apply, or in any manner consent, aid, or assist in appropriating and applying, by the drawing, signing, or payment of any check, warrant, or otherwise, any portion of any money provided for the redemption of the bonds aforesaid, or for the payment of the interest thereon, or who shall direct or use any money belonging to the improvement fund for any other purpose than those for which the fund was created, shall be deemed to be guilty of
114 a misdemeanor, and on conviction thereof, before a court of competent jurisdiction, shall be subject to a penalty of not less than five hundred dollars nor more than one thousand dollars, and imprisonment for a term of not less than three nor more than twelve months.

SEC. 9. *And be it further enacted,* That in view of the emergency arising from the necessity for the improvement and repair of the streets, avenues, alleys, sewers, roads, and bridges in the District of Columbia, this act shall take effect immediately upon its passage.

Approved July 10, 1871.

"COMPREHENSIVE PLAN."

To the Council of the District of Columbia:

In compliance with a resolution adopted by your honorable body on the 16th instant, the Board of Public Works has the honor to transmit a statement of the improvements which it recommends and the estimated cost thereof, and to submit, for your consideration, a bill providing the necessary means for the execution of the work.

The statement, it will be seen, contemplates, permanent improvements in every portion of the District of Columbia, and comprises almost every street and avenue in the cities of Washington and Georgetown, as well as all the roads in the county. It provides for the improvement of the streets in the central part of Washington, by lessening the width of the carriageways, and paving and sewering them, and also embraces the building of a main sewer from Eighth street northwest to Rock creek; the sewerage of the valley of the Tiber, and the paving and macadamizing of a large number of streets in the less thickly populated sections of the city. It is estimated that four million three hundred and fifty-eight thousand five hundred and ninety-eight dollars ($4,358.598) will be the proportion of the expense to be borne by the treasury of the District in making these improvements, and as, in the opinion of the Board, that amount will be sufficient to complete them, the necessity of annual appropriations, so far as the prosecution of these works is

concerned, will be obviated by the passage of the bill herein respectfully recommended.

115 Were it required that this seemingly large amount should be paid within a single year, grave apprehensions might justly arise as to the ability of the people to meet so heavy a burden. It is, however, proposed in the bill that the money shall be raised by a loan extending over a period of twenty years, and it will be found to contain careful provision both for the payment of the interest and the extinguishment of the debt. It is believed by the Board that should the bill become a law, and proper measures be taken to protect our credit, there will be no difficulty in disposing, at a satisfactory rate, of the bonds which it is proposed to issue.

The aggregate of the accompanying statement may at first appear extravagant, but it should be remembered that in Washington alone the city's proportion of the work done upon the streets during the past two years reached nearly a million and a half of dollars. To dispel any suspicion of extravagance in its views or aims, the Board need only invite a comparison of the work accomplished within that time, at so heavy an outlay, with the comprehensive plan of improvements which it proposes to inaugurate and complete within the limit of the estimates.

It is perhaps proper to explain, in this connection, that these estimates are based upon the average rates paid for similar improvements by the city of Washington, less twenty per cent. deducted in view of the plan proposed by the Board to pay cash for all work that may be done under its direction. It was, to a great extent, customary, under the old system, to commence and complete an improvement in advance of any arrangement for the payment of the cost. Contractors were compelled to consider this fact, and also that, as the corporation was rarely in funds to meet its obligations, the assessments, when made, would not yield more than eighty cents on the dollar. To meet this condition of affairs they generally added to their estimates twenty per cent.

Another objectionable practice which, in some instances, prevailed prior to the organization of a government for the District was that of excessive measurements in computing the amount of work done. This will be prevented by the establishment, in advance, of the exact quantities of each kind of work to be executed; and thus, when a contract is entered into, the entire amount to be paid can be specifically determined. No increase can thereafter be al-

116 lowed, as by the terms of the organic act even the Legislative Assembly is prohibited, after a contract has been made, from granting or authorizing "extra allowance" or "compensation" to the contractor.

Heretofore no improvement made could be considered a permanency; and in numerous instances property assessed for work which it was supposed would accomplish the object desired, has, in a short time, been reassessed to remedy some real or fancied defect in the plans first executed. The system adopted by the Board contemplates that a street having once been improved, the property-

holder will not be required to meet another assessment for that particular object, and that the only expense thereafter will be for ordinary repairs that may, from time to time, become necessary.

It will be seen, upon examination, that the statement embraces a thorough system of improvements, which may require years for completion. The Board is of the opinion that the interests of the District imperatively require that the necessary appropriations should at once be granted, in order that operations may be commenced without delay. Contracts for material can then be so regulated as to thwart monopolies and improper combinations, and the projected improvements may be prosecuted in such connection, the one with the other, as to accomplish the largest results for the least outlay.

Under the municipal governments heretofore existing about three hundred thousand dollars were yearly collected and expended as ward and county funds, for casual repairs and local improvements, and, in addition, a large amount was collected and applied from the general fund. The plan of the Board contemplates the completion of a grand systen of improvements, without one dollar of increased tax upon the property-holders of the District. Indeed, the amount of taxation necessary to pay the interest upon the proposed bonded debt, and to provide a sinking fund for the extinguishment of the principal, will not cost annually the sum heretofore expended as ward and county funds for mere casual repairs, and which, as thus applied, was virtually thrown away.

Regarding the effect of this plan upon the general taxes of the District, the Board respectfully submits that to pay the interest on $4,358,598 in bonds will require in currency $305,101.86.
117 Add the estimated premium on gold for the next one or two years, at ten per cent., and the amount required to pay the interest will be $335,611.86. An addition of three per cent. on the principal, in currency, (which will be more than sufficient to retire the gold bonds,) gives $466,368 as the amount which will have to be raised by taxation to meet yearly the interest and principal of the proposed loan. Of course, with each year the debt will decrease, and in a brief period the rate of taxation will be much less than that stated.

The board is satisfied, upon careful consideration, that, as a rule, the value of property in the District will not warrant the general introduction of wood or other expensive pavements, and that, if at all used, they should be confined to a few of the principal avenues of communication. It is believed that road-beds of stone, more durable and equally free from dust and mud, can be constructed at less cost than has usually been paid for the most ordinary kind of stone pavements.

The Board begs to state; in conclusion, that a thorough investigation of the subject convinces it that sound policy demands the immediate inauguration of a comprehensive and stable system of improvements, and that if its recommendations should be adopted by the Legislative Assembly, property will be enhanced in value to an

extent that will more than meet the expenses to be incurred, the seat of the National Government be rendered attractive to the people, and the proportionate rate of taxation be largely reduced, as compared with that which has heretofore prevailed.

WASHINGTON, D. C., *June* 20, 1871.

H. D. COOKE.
JAMES A. MAGRUDER.
ALEX. R. SHEPHERD.
A. B. MULLET.
S. P. BROWN.

118 *Estimated Cost of Proposed Improvements.*

Estimated cost of carrying into effect the proposed improvements exhibited on the ac-

119 Designation.	Gutter-stone, 50 cents per lineal foot.		Graveling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds.*		*Feet.*	
A street north, between Eleventh and Twelfth streets east	.....	.....	13,000	$1,950	13,000	$3,250	.....	.....
A street south, between Eleventh and Seventeenth streets east	.....	.....	13,000	1,550	16,000	4,000	.....	.....
B street north, between Sixth and Fifteenth streets west	3,060	$1,530	.....	.....	.....	.....	3,060	$3,060
B street north, between Fourth and Sixth streets east	.....	.....	3,240	486	1,084	271	.....	.....
B street south, between Eleventh and Fourteenth streets east	.....	.....	33,000	4,950	33,000	8,250	.....	.....
B street south, between Seventh and Fourteenth streets west	.....	.....	.....	.....	.....	.....	.....	.....
C street north, between Ninth and Fifteenth streets west	4,100	2,050	.....	.....	.....	.....	4,100	4,100
C street north, between Seventeenth and Twenty-first streets west	.....	.....	12,000	1,800	1,200	3,000	.....	.....
C street north, between Twenty-first and Twenty-seventh streets west	.....	.....	4,600	690	4,500	1,115	.....	.....
C street north, between Fourth and Sixth streets west	.....	.....	3,240	486	1,084	271	.....	.....
C street south, between Pennsylvania avenue and Workhouse	.....	.....	31,000	4,650	31,000	7,750	.....	.....
C street south, between Eleventh street west to Canal	.....	.....	16,000	2,400	26,000	6,500	.....	.....
D street north, between Sixth and Fifteenth streets west	6,280	3,140	.....	.....	.....	.....	6,280	6,280
D street north, between Seventeenth and Twentieth streets west	.....	.....	12,000	1,800	12,000	3,000	.....	.....
D street north, between Twenty-first and Twenty-seventh streets west	.....	.....	11,000	1,650	12,000	3,000	.....	.....
D street south, between New Jersey avenue and Fourth street east	.....	.....	9,000	1,350	17,400	4,350	.....	.....
D street south, between Fourth and Nineteenth streets east	.....	.....	40,000	6,000	60,000	15,000	.....	.....
D street south, between Fourth and Nineteenth streets east	.....	.....	.....	.....	.....	.....	.....	.....
E street north, between Fourth street east and Fifteenth streets west	8,600	4,300	.....	.....	.....	.....	8,600	8,600
E street north, between Eighth and Ninth and Eleventh and Fourteenth streets east	.....	.....	.....	.....	.....	.....	.....	.....
E street north, between Fourth street east and Eastern Boundary	.....	.....	30,000	4,500	65,300	16,325	.....	.....
E street south	.....	.....	.....	.....	.....	.....	.....	.....
F street north, between Fourth and Fifth streets west and Judiciary Square	1,448	724	.....	.....	3,600	900	1,148	1,148
F street north, between Twenty-first and Twenty-seventh streets west	.....	.....	18,000	2,700	18,000	4,500	.....	.....
F street north—Sewer in northeastern valley along G street north, from Thirteenth street east to Tiber creek, with branch up Seventh street east as far as Maryland avenue	.....	.....	.....	.....	.....	.....	.....	.....
F street north, between Seventeenth and Twenty-first streets west	2,732	1,366	.....	.....	12,200	3,050	2,732	2,732
F street south	.....	.....	.....	.....	.....	.....	.....	.....
G street north, between Fourth and Fifteenth streets west	9,140	4,570	.....	.....	.....	.....	9,140	9,140
G street north, between Second street east and Maryland avenue	.....	.....	35,800	5,325	60,000	15,000	.....	.....
G street north, between Seventeenth and Twenty-seventh streets west	.....	.....	.....	.....	.....	.....	.....	.....
G street south—Brick pavement, &c., between Ninth and Thirteenth streets east, and grading, graveling, and brick pavements, both sides, between Thirteenth street east and Georgia avenue	.....	.....	.....	.....	.....	.....	.....	.....
G street south, between Third street west and the Canal	.....	.....	10,000	1,500	10,000	2,500	.....	.....
G street south, between Twelfth street east and Congressional Burying Ground	.....	.....	25,000	3,750	18,000	4,500	.....	.....
H street north, between Seventh and Fourteenth streets west	4,980	2,490	.....	.....	.....	.....	4,980	4,980

companying plans, recommended by the Board of Public Works, District of Columbia.

120 Macadamizing, $1 per sq. yard.		Sewers.	Brick pavement.	Cobble stone pavement.	Wood pavement.	Total.
Y'ds.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
						$5,200
						5,900
20,400	$20,400			1,020, at 70c., $714		25,704
						757
						13,200
17,000	17,000	5,400, at $5, $27,000				44,000
11,600	11,600	5,200, at $5, 26,000				43,750
						4,800
						1,805
						757
						12,400
		8,000, at $5, 40,000				48,900
17,000	17,000	5,400, at $5, 27,000		2,090, at 70c., 1,463		54,883
						4,800
						4,650
						5,700
						21,000
						a32,000
20,000	20,000	9,000, at $5, 45,000		2,870, at 70c., 2,009		79,909
						b6,600
						20,825
4,000	4,000	1,500, at $5, 7,500	1,448, at $1, $1,448			16,020
3,500	3,500					10,700
		6,000, at $12, 72,000				72,000
			1,370, at $1, 1,370	900, at 70c., 630		9,148
24,000	24,000	8,800, at $5, 44,000		3,050, at 70c., 2,135		83,845
						20,325
					30,000, at $2, $60,000c	60,000
						9,500
						4,000
						8,250
10,840	10,840	5,600, at $5, 28,000		1,660, at 70c., 1,162		47,472

a. Curbs, sidewalks, &c., both sides.

b. Brick pavement.

c. Bluestone pavement.

121 Designation.	Gutter-stone, 50 cents per lineal foot.		Gravelling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds.*		*Feet.*	
H street north, between Eighteenth and Twenty-first streets west			8,000	$1,200	3,000	$750		
H street north, from Fourth street west to the Tiber								
H street north, between Twenty-first and Twenty seventh streets west			17,000	2,550	28,000	7,000		
H street south, between Seventh and Tenth streets west			7,000	850	21,000	5,250		
H street south, from Four-and-a-half street to the Canal			14,000	2,100	9,000	2,250		
I street north, between Twentieth and Twenty-first streets west			8,000	450				
I street north, between Twenty-first and Twenty-seventh streets west			17,000	2,550	10,000	2,500		
I street north, between Fourth street west and Tiber								
I street north, between Seventh street east and Eastern Boundary			17,000	2,550	18,000	4,500		
I street south, between Virginia avenue and Seventh street east and Georgia avenue and Eighth street east								
I street south, between Four-and-a half street west and New Jersey avenue			22,000	3,300	22,000	5,500		
K street north, between Fourth and Twelfth streets west	13,700	$6,850					13,700	13,700
K street north, between Seventeenth street west and New Hampshire avenue	4,800	2,400					4,800	4,800
K street north, between Circle and Rock creek bridge	4,000	2,000					4,000	4,000
K street north, from Seventh street west to Tiber								
K street south, between Ninth and Eleventh streets east								
K street south, between Four-and-a half street west and Canal			13,000	1,950	17,000	4,250		
L street north, between Fourth and Fifteenth streets west	8,732	4,366					8,732	8,732
L street north, between Fifteenth and Twenty-fourth streets west					14,000	3,500		
L street north, between Twentieth and Twenty-th rd streets west					18,000	4,500		
L street north, between Fourth street west and the Tiber								
L street south, between Ninth and Eleventh streets east								
L street south, between New Jersey avenue and South Carolina avenue								
For construction of sewers to drain G, H, I, and K streets south, between Third street west and James creek								
M street north, between Fifteenth street west and Rock creek					40,000	10,000		
For paving and sewering M streets north, between New York avenue and Vermont avenue								
M street south, between Fourth and Tenth streets east								
M street south, between Third and Seventh streets west			10,700	1,605	10,700	2,675		
N street north, between Fourth and Fifteenth streets west	9,000	4,500					9,000	9,000
N street north, between Rhode Island avenue and Twenty-fifth street west								
N street north, between Fifteenth street west and Rock creek			32,500	4,875	56,600	14,150		
N street south, between Ninth street east and Eleventh street east, grading, graveling, brick pavement, &c								
O street north, between Tenth street west and Vermont avenue, and New Hampshire avenue and Twenty-second street west								
O street north, between Fifteenth street west and Seventeenth street west, for repairing, extending, improving, &c								

122	Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble stone pavement.	Wood pavement.	Total.
Yards.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
.....	.....	.....	.....	.....	.....	$1,950
.....	.....	5,200, at $5, $26,000	.....	.....	.....	26,000
3,500	$3,500	.....	.....	.....	.....	13,050
.....	.....	.....	.....	.....	.....	6,100
.....	.....	.....	.....	.....	.....	4,350
.....	.....	.....	.....	.....	.....	450
3,500	3,500	.....	.....	.....	.....	8,550
.....	.....	5,200, at $5, 26,000	.....	.....	.....	26,000
.....	.....	.....	.....	.....	.....	7,050
.....	.....	.....	6,800, at $1, $6,800	.....	.....	6,800
.....	.....	.....	.....	.....	.....	8,800
17,287	17,287	4,100, at $5, 20,500	.....	4,570, at 70c., $2,199	.....	60,536
11,000	11,000	.....	.....	1,600, at 70c., 1,120	.....	19,320
.....	.....	.....	.....	.....	8,000, at $2, $16,000d	22,000
.....	.....	9,000, at $7, 63,000	.....	.....	.....	63,000
.....	.....	.....	2,100, at $1, 2,100	.....	.....	2,100
.....	.....	.....	.....	.....	.....	6,200
22,575	22,575	8,732, at $5, 43,660	.....	2,910, at 70c., 2,037	.....	81,370
30,000	30,000	3,150, at $5, 15,750	.....	.....	.....	49,250
.....	.....	.....	.....	.....	.....	4,500
.....	.....	5,200, at $5, 26,000	.....	.....	.....	26,000
.....	.....	.....	1,000, at $1, 1,000	.....	.....	1,000
.....	.....	.....	6,090, at $1. 6,000	.....	.....	6,000
.....	.....	11,090, at $5, 55,000	.....	.....	.....	55,000
34,000	34,000	11,000, at $5, 55,000	.....	.....	.....	99,000
.....	.....	.....	.....	.....	.....	160,324
.....	.....	.....	.....	.....	.....	15,000
.....	.....	.....	.....	.....	.....	4,280
21,414	21,414	9,000, at $5, 45,000	.....	3,000, at 70c., 2,100	.....	79,914
.....	.....	9,800, at $5, 49,000	.....	.....	.....	49,000
.....	.....	.....	.....	.....	.....	19,025
.....	.....	.....	.....	.....	.....	3,500
.....	.....	4,150, at $5, 20,750	.....	.....	.....	20,750
.....	.....	.....	.....	.....	.....	1,000

d Stone pavement.

123 Designation.	Gutter-stone, 50 cents per lineal foot.		Gravelling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds.*		*Feet.*	
P street north, between Ninth street west and Twenty-second street west					20,000	$5,000		
P street north, between Ninth street west and Twenty-second street west	3,200	$1,600					$3,200	$3,200
Paving and sewering alleys in squares 446, 447, 448, between M and P streets north and Sixth and Seventh streets west								
Q street north, between Tenth and Twenty-second streets west								
Q street north, between Seventh and Fourteenth streets west			16,700	$2,505	3,500	875		
R street north, between Vermont avenue and Boundary								
R street north, between Fourteenth street east and Eastern Boundary	4,980	2,490	32,700	4,905	28,000	7,000	4,980	4,980
R street north, between Seventh street east and First street east								
S street north, from Boundary street to Boundary street [a]								
T street north, from Seventeenth street west to Nineteenth street west								
T street north, from Seventh street west to Fourteenth street west			17,000	2,550	5,000	1,250		
T street north, from Eighth street east and East Boundary								
U street north, from Boundary street to Boundary street			31,000	3,720	20,000	5,000		
V street north, from Vermont avenue to Boundary			31,000	3,720	20,000	5,000		
W street north, from Boundary street to Boundary street			31,000	3,720	20,000	5,000		
Boundary street, from Ninth street west to Twenty second street west, from grading and macadamizing from P street bridge to Bladensburg road								
Continuation of sewer in C street north, between Second street east and New Jersey avenue; along said avenue to E street south, and along E street south to the canal								
Main sewer, commencing at Boundary street and Eighth street west, running along Eighth street west to T street north; along T street north to New Hampshire avenue; southwesterly along New Hampshire avenue to Eighteenth street west; thence along Eighteenth street west to Massachusetts avenue; thence south with said avenue to Sixteenth street west; thence along Sixteenth west to L street; thence along L street to near Twenty-second street west; thence in a direct line along the course of the Slash Run to Rock Creek								
Main sewer, sixth ward; commencing at Ninth street east and South Carolina avenue, running along said avenue to Eighth street south; thence along said street to E street south; thence along said street to Seventh street east; thence along said street to M street south; and west along M street to the river								
Constructing sewer of similar dimensions from Pennsylvania avenue along the Tiber valley to Gales's with lateral branch to old St. Patrick's burying ground								
First street west								
First street east, between B street south and Georgia avenue			4,200	6,300	20,000	5,000		
First street east, between D and H streets north	1,500	750	14,000	2,100	31,000	7,750	1,500	1,500
Second street west								
Second street east, between A street north and North Carolina avenue								
Third street west, between G and N streets south			19,000	2,850	18,700	4,675		

a North Carolina avenue to A street north. *b* A to F street north.

124	Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone Pavement.	Wood pavement.	Total.
Y'ds.		*Lineal Feet.*	*Square Yards.*	*Square Yards.*	*Square Yards.*	*Total.*
.....	.....	11,400, at $5, $57,000	.....	.....	.....	$62,000
66,181	$66,181	.....	.....	.....	.....	70,981
.....	.....	.....	.....	.....	.....	10,000
.....	.....	11,850, at $5, 59,250	.....	.....	.....	59,250
.....	.....	.....	.....	.....	.....	3,380
.....	.....	10,700, at $5, 53,500	.....	.....	.....	53,500
.....	.....	.....	.....	1,700, at 70c., $1,190	.....	20,565
.....	.....	8,500, at $5, 42,500	.....	.....	.....	42,500
.....	.....	10,250, at $5, 81,250	.....	.....	.....	81,250
.....	.....	2,700, at $5, 13,500	.....	.....	.....	13,500
.....	.....	.....	.....	.....	.....	3,800
.....	.....	1,400, at $5, 7,000	.....	.....	.....	7,000
.....	.....	9,180, at $5, 45,900	.....	.....	.....	54,620
.....	.....	8,400, at $5, 42,000	.....	.....	.....	50,720
.....	.....	5,260, at $5, 26,300	.....	.....	.....	35,020
.....	128,000	10,000, at $5, 50,000	.....	.....	.....	178,000
.....	.....	2,700, at $5, 21,600	.....	.....	.....	21,600
.....	.....	14,910, at $20, 298,200	.....	.....	.....	298,200
.....	.....	4,231, at $12, 50,772	.....	.....	.....	50,772
.....	.....	11,000, at $60, 660,000	.....	.....	.....	660,000
.....	.....	*a*4,000, at $5, 20,000	.....	.....	.....	31,300
.....	.....	*b*4,000, at $5, 20,000	.....	500, at 70, 350	.....	32,450
.....	.....	3,000, at $5, 15,000	.....	.....	.....	15,000
.....	.....	*c*1,844, at $5, 9,220	.....	.....	.....	16,745

c E to I street north.

125 Designation.	Gutter-stone, 50 cents per lineal foot.		Gravelling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds.*		*Feet.*	
Third street east, between E street north, to the Boundary			26,000	$3,300	31,900	$7,975		
Fourth street west, between D and N streets north	8,000	$4,000					8,000	$8,000
Fourth street east, between M and N streets south								
Fourth street east, between East Capitol and E streets south			14,000	2,100	14,500	3,630		
Fourth street east, belween E street north and the Boundary			26,000	3,900	33,300	8,250		
Fourth street east, between B and E streets north								
Fourth street east, between M street south and Georgia avenue, setting curbstones, repairing footwalks, &c.								
Fourth street east, between Maryland avenue and H street north, setting curbstones, repairing footwalks, &c								
Fifth street west, between G and M streets north	4,500	2,250					4,500	4,500
Fifth street east, between K and M streets south								
Fifth street east, between East Capitol and E streets north			14,000	2,100	3,000	2,000		
Four-and-a-half street west, from Canal to Arsenal								
Sixth street west, from Canal to N street south	1,200	600					1,200	1,200
Sixth street east, from B street south to the river								
Sixth street east, between G and I streets south, grading, gravelling, brick pavements, gutters &c								
Sixth street east, between East Capitol and E streets north			14,000	2,100	8,000	2,000		
Sixth street east, between E street north and the Boundary			30,000	4,500	40,000	10,000		
Seventh street west, between M street north and the Boundary								
Seventh street west, between L street north and the Boundary								
Seventh street west, from B street south to the river								
Seventh street east, between H street north and Boundary, which includes sidewalks, gravelling, &c., to Deaf and Dumb Asylum								
Eighth street west, between Pennsylvania avenue and N street north	8,000	4,000					8,000	8,000
Eighth street west, between B street south and the river			24,000	3,600	24,000	6,000		
Ninth street west, from the river to the Boundary, all portions not already sewered								
Ninth street west, from Pennsylvania avenue to N street north								
Ninth street east, between M and N streets south, grading, gravelling, brick pavement, &c								
Ninth street east, between East Capitol and E streets south			14,000	2,100	12,000	3,000		
Tenth street west, between Canal and N street north	7,900	3,950					7,900	7,900
Tenth street west between N street north and Boundary								
Tenth street east, between I street south and N street south, brick pavement, gravelling, &c.								
Tenth street east, between East Capitol and E streets north			14,000	2,100	13,500	3,375		
Eleventh street west, between Canal and N street north	9,000	4,500					9,000	9,000
Eleventh street west, between B street south and river								
Eleventh street west, between N street north and Boundary								
Eleventh street east, brick pavement from Q street to Navy-yard bridge								

d A street north to E street south. *e* West side.

126	Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Y'ds.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
.....	.....	*d*5,600, at $5, $2,800	.....	.....	.....	$39,275
20,000	$20,000	2,400, at $5, 12,000	.....	2,700, at 70c., $1,890	.....	45,890
.....	.....	.....	.....	.....	.....	1,000
.....	.....	.....	.....	.....	.....	5,730
.....	.....	.....	.....	.....	.....	12,150
.....	.....	.....	4,000, at $1, $4,000	.....	.....	*e*4,000
.....	.....	.....	.....	.....	.....	1,000
.....	.....	.....	.....	.....	.....	6,700
12,000	12,000	2,400, at $5, 12,000	.....	1,500, at 70c., 1,050	.....	31,800
.....	.....	.....	.....	.....	.....	*f*3,550
.....	.....	.....	.....	.....	.....	4,100
.....	.....	13,000, at $5, 65,000	.....	.....	*g*50,600, at $2, 101,200	166,200
24,640	24,640	*h*18,000, at $5, 90,000	.....	370, at 70c., 259	.....	116,669
40,000	40,000	.....	.....	.....	.....	40,000
.....	.....	.....	.....	.....	.....	5,000
.....	.....	.....	.....	.....	.....	4,100
.....	.....	.....	.....	.....	.....	14,500
.....	.....	6,600, at $5, 33,000	.....	.....	.....	33,000
.....	.....	.....	.....	24,900, at 70c., 17,400	.....	17,430
.....	.....	18,600, at $5, 93,000	.....	.....	23,194, at $4, 92,776	185,776
.....	.....	.....	.....	.....	.....	12,300
18,000	18,000	6,000, at $5, 30,000	.....	2,700, at 70c., 1,890	.....	61,890
.....	.....	6,800, at $5, 34,000	.....	.....	.....	43,600
.....	.....	13,000, at $5, 65,000	.....	.....	.....	65,000
48,000	48,000	.....	.....	.....	.....	48,000
.....	.....	.....	.....	.....	.....	5,100
.....	.....	.....	.....	.....	.....	5,100
17,000	17,000	4,100, at $5, 20,500	.....	2,700, at 70c., 1,890	.....	51,240
.....	.....	10,180, at $5, 50,900	.....	.....	.....	50,900
.....	.....	.....	.....	.....	.....	7,000
.....	.....	.....	.....	.....	.....	5,475
21,000	21,000	7,000, at $5, 35,000	.....	2,300, at 70c., 1,610	.....	66,610
.....	.....	4,800, at $5, 24,000	.....	.....	.....	24,000
.....	.....	19,400, at $5, 52,000	.....	.....	.....	52,000
.....	.....	.....	.....	.....	.....	1,000

f Grading and gravelling. *g* Stone paving. *h* Between river and Boundary.

127 Designation.	Gutter-stone, 50 cents per lineal foot.		Graveling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds.*		*Feet.*	
Eleventh street east, between East Capitol and E streets north			14,000	$2,100	13,000	$3,250		
Twelfth street west, between Canal and E street north	9,100	$4,550					9,100	$9,100
Twelfth street west, between B street south and river								
Twelfth street west, between N street north and Boundary								
Twelfth street east, grading, graveling, brick pavement, gutters, &c., from E street south to Virginia avenue								
Thirteenth street west, between Canal and N streets north	9,230	4,615					9,230	9,230
Thirteenth street west, between N street north and Boundary								
Thirteenth street east, brick pavement, &c., between E street south and Pennsylvania avenue; same between I street and Virginia avenue, with grading and graveling between E street and Virginia avenue								
Thirteenth street east, between East Capitol and E streets north			14,000	2,100	25,000	6,250		
Thirteen and-a-half street west, between Canal street and Pennsylvania avenue	1,900	950					1,900	1,900
Fourteenth street west, between Rhode Island avenue and D street north								
Fourteenth street east, grading, graveling, brick pavement, both sides, between E and L streets south								
Fourteenth street west, between H street north and Boundary								
Fifteenth street west, between Canal and N street north (*b*)	8,950	4,475					8,950	8,950
Fifteenth street west, between N street north and Boundary								
Fifteenth street east, between North Carolina avenue and Benning's Bridge road			16,200	2,130	15,000	4,750		
Sixteenth street west, between K street and Boundary								
Seventeenth street west, between Massachusetts avenue and Boundary								
Seventeenth street west, between L street north and Boundary			39,000	5,850	39,000	9,750		
Eighteenth street west, between L street and Massachusetts avenue and Q street and Boundary			30,000	4,500	30,000	7,500		
Eighteenth street west, between K street and Canal			16,000	2,400	5,000	1,250		
Nineteenth street west, between Connecticut avenue and Boundary and I and L streets								
Nineteenth street west, between K street and Canal			28,000	4,200	9,000	2,250		
Twentieth street west, between I street and New Hampshire avenue and Boundary								
Twentieth street west, between K street and Canal			22,000	3,300	10,000	2,500		
Twenty-first street west, between I street north and Boundary								
Twenty-first street west, between K streets and Canal			22,000	3,300	8,000	2,000		
Twenty-second street west, between K and O streets north								
Twenty-third street west, between Pennsylvania avenue and Connecticut avenue								
Twenty fourth street west, between Pennsylvania avenue and Rock creek (between I and E sts.)			15,000	2,250	10,000	2,500		
Twenty-fifth street west, between Pennsylvania avenue and Rock creek (between M street and Potomac)			33,000	4,950	74,000	18,500		
North Capitol street, between B and E streets north							2,600	2,600
North Capitol street, between E street north and Boundary								

a East Capitol to I street.

b Except where sewered and paved.

128 Macadamizing, $1 per sq. yard.		Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Y'ds.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
.....	.....	a6,920, at $5, $34,600	.....	.....	.....	$39,050
21,000	$21,000	2,600, at $5, 13,000	.....	3,030, at 70c., $2,121	.....	49,771
14,000	14,000	4,800, at $5, 24,000	.....	.....	.....	38,000
.....	.....	9,000, at $5, 49,500	.....	.....	.....	49,500
.....	.....	.....	.....	.....	.....	8,100
21,000	21,000	.....	.....	3,080, at 70c., 2,156	.....	37,001
.....	.....	8,450, at $5, 42,250	.....	.....	.....	42,250
.....	.....	.....	.....	.....	.....	17,100
.....	.....	.....	.....	.....	.....	8,350
5,000	5,000	2,200, at $5, 11,000	.....	630, at 70c., 431	.....	19,281
.....	.....	7,950, at $5, 39,750	.....	.....	.....	39,750
.....	.....	.....	.....	.....	.....	21,000
.....	.....	.....	.....	.....	55,000, at $4, 220,000	220,000
21,000	21,000	4,400, at $5, 22,000	.....	2,650, at 70c., 1,855	.....	58,280
.....	.....	11,650, at $5, 58,250	.....	.....	.....	58,250
.....	.....	.....	.....	.....	.....	6,180
.....	.....	8,500, at $5, 42,500	.....	.....	.....	42,500
.....	.....	6,750, at $5, 32,750	.....	.....	.....	32,750
.....	.....	.....	.....	.....	.....	15,600
.....	.....	8,150, at $5, 40,750	.....	.....	.....	52,750
.....	.....	.....	.....	.....	.....	3,650
.....	.....	5,550, at $5, 27,750	.....	.....	.....	27,750
.....	.....	.....	.....	.....	.....	6,450
.....	.....	9,300, at $5, 46,500	.....	.....	.....	46,500
.....	.....	.....	.....	.....	.....	5,800
.....	.....	8,850, at $5, 44,250	$8,500c	.....	.....	52,750
.....	.....	.....	.....	.....	.....	5,300
.....	.....	9,200, at $5, 46,000	.....	.....	.....	46,000
.....	.....	3,500, at $5, 17,500	.....	.....	.....	17,500
.....	.....	3,650, at $5, 18,250	.....	.....	.....	23,000
.....	.....	3,400, at $5, 17,000	.....	.....	.....	50,450
.....	.....	2,990, at $5, 14,950	.....	.....	.....	17,550
.....	.....	11,000, at $5, 55,000	.....	.....	.....	55,000

c Other improvements.

129 Designation.	Gutter-stone, 50 cents per lineal foot.		Gravelling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds.*		*Feet.*	
East Capitol street, between First street east and Lincoln square			56,000	$8,400	19,000	$4,750		
New York avenue, between Fourth and Fifteenth streets west	8,160	$4,080					8,160	$8,160
New York avenue, between Seventeenth and Twenty-first streets west			28,000	4,200	10,000	2,500		
New York avenue, between Twenty first and Twenty-third streets west			13,500	2,025	18,000	4,500		
Massachusetts avenue, between Fourth and Fifteenth streets west	8,790	4,395					8,790	8,790
Massachusetts avenue, between Fourteenth and Twenty second streets west								
Massachusetts avenue, between North Capitol and Nineteenth streets east			132,000	19,800	18,000	18,000		
Vermont avenue, between K and N streets north	2,840	1,420					2,840	2,840
Vermont avenue, between K street and Boundary								
Vermont avenue, between N street and Boundary			4,500	6,750	15,000	3,750		
Rhode Island avenue, between Tenth and Eighteenth streets west								
Rhode Island avenue, between Seventh and Fourteenth streets west	2,980	1,490	31,000	4,650	10,400	2,600	2,980	2,986
New Hampshire avenue, between Pennsylvania avenue and Eighteenth street and T street north and Boundary								
New Hampshire avenue, between river and Boundary			39,000	5,850	90,000	22,500		
Connecticut avenue, between Eighteenth and Twenty-first streets west								
Pennsylvania avenue, between Fifteenth street and Aqueduct bridge								
Pennsylvania avenue, between Thirteenth and Eighteenth streets east								
Pennsylvania avenue, between First and Eighth streets east								
Virginia avenue, from Seventh street to Rock creek			46,900	7,035	94,000	23,500		
Virginia avenue, from Third street east to South Capitol								
Virginia avenue, between Sixth 3nd Seventh, Eighth and Ninth, Tenth and Eleventh streets east			54,000	8,100				
New Jersey avenue, from New York avenue to the Boundary					36,000	9,000	5,400	5,400
Georgia avenue, brick pavement between avenue								
Georgia avenue, brick pavement between Third								
Georgia avenue, from M south to Nineteenth streets east			72,000	10,800	9,800	21,500		
Maryland avenue, between First street east and East Boundary			102,000	15,300	37,000	21,750		
North Carolina avenue, between New Jersey avenue and East Boundary			61,280	9,192	97,000	13,950		
South Carolina avenue, from Second to Fifteenth streets east			72,000	10,800	98,000	24,500		
Delaware avenue, from B street north to Boundary			80,000	12,000	84,000	21,000		
Delaware avenue, from B street south to P street south			80,000	12,000	130000	32,500		
Improvements and repairs in 11th district								
Improvements and repairs in 18th district								
Lamps throughout city								
Relaying stone pavement of Seventh street west, from L street north to Boundary								
Paving and sewering alleys in squares 446, 447, and 448								
Water-main on F street, from Eleventh to Thirteenth streets west, and on Thirteenth street, from S to E streets north								
Water main on Eleventh street west, from P to T streets north								

130 Macadamizing.	$1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Yds.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
						$13,150
13,740	$13,740	9,000, at $5, $45,000		2,700, at 70c., $1,904		72,884
						6,700
						6,525
20,530	20,530	11,600, at $5, 58,000		2,930, at 70c., 2,051		93,766
		5,250, at $5, 26,250				26,250
		2,000, at $5, 10,000				47,800
4,170	4,170	3,600, at $5, 18,000		950, at 70c., 675		27,105
		10,300, at $5, 51,500				51,500
						10,500
		5,150, at $5, 25,750				25,750
				990, at 70c., 693		12,419
		7,740, at $5, 38,700				38,700
						28,350
		2,400, at $5, 12,000				12,000
					63,530, at $4, $264,120	264,120
						14,900
					d50,000, at $2, 100,000	100,000
						30,525
						6,400
						8,100
		c18,000, at $5, 90,000				112,500
						33,000
						1,200
						35,300
						37,050
						23,142
						35,300
						33,000
						44,500
						150,000
						150,000
						45,000
						17,430
						10,000
						5,500
						6,300

d Stone pavement.

e B north to Boundary.

131 Designation.	Gutter-stone, 50 cents per lineal foot.		Gravelling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Yds.*		*Feet.*	
Water-main on Vermont avenue, from T to W streets north, and Tenth streets west, from T to W streets north								
Water-main on Sixteenth street west, from L street north to Boundary								
Alleys in square 274, 335, 337, 309, and 365								
Paving alleys and abating nuisances in various sections								
Gas-pipe on Sixteenth street west, from L street north to Boundary								
Fire-plugs on Sixteenth street west, from L street north to Boundary								
Planting trees								
GEORGETOWN.								
Carrying out the improvements, such as grading sewering, curbing, etc., certain streets, as specified in a letter to board of Hon. W. D. Cassin, dated June 1, 1871, (see letter attached)								
Paving, grading, etc., Bridge, Montgomery, Green, Congress, Washington, High streets, etc								
UNIONTOWN.								
Jackson street, grading and graveling								
Queen Chapel road								
Stanton avenue								
COUNTY.								
Grading Asylum Hill and improving road								
Two culverts on the Anacostia road								
Repairs of roads east of Eastern branch								
Opening sixteenth street west, from Boundary street to Piney branch								
Repairs of Bladensburg turnpike road								
Improving Seventh street road								
Bridge across Piney branch and Seventh street road								
Repair, grading, and extending Woodley road								
Bridge at Pierce's Mill, and opening road from same to or near stone quarry on old road								
Repairs of roads west of Rock creek								
Repairs between Rock creek and Eastern branch								
Stone abutment for bridge on Military road at Rock creek								
Repairs of road leading from Georgetown to Chain Bridge; also of road leading to Droer's Rest, and of other roads not herein mentioned								
Total								

Deduct 20 per cent. of amount of estimates saved by the adoption of the cash system prepared by

Deduct ⅓, chargeable to property

The Honorable A. B. MULLETT,
Chief Engineer Board of Public Works, District of Columbia.

132 Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Y'ds.	*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
					$16,800
					15,000
					5,600
					51,000
					10,000
					1,200
					50,000
					250,000
					250,000
					3,000
					5,000
					3,000
					4,000
					2,600
					4,000
					7,500
					23,000
					2,500
					4,000
					6,000
					6,000
					6,000
					15,500
					1,800
					15,090
					$8,222,996
the Board					1,644,599
					6,578,397
					2,192,799
					$4,385,598

Respectfully submitted.

WM. FORSYTH,
First Ass't Engineer Board of Public Works.

133 * The following is the letter referred to under the head of "Georgetown":

JUNE 1, 1871.

A. R. SHEPHERD, Esq.,

DEAR SIR: In response to yours of 25th May, instant, I beg leave to call the attention of the Board of Public Works to the condition of *First*, *Second*, *Third*, *Fourth*, *Fifth*, and *Sixth* streets in Georgetown, D. C. The corporation of Georgetown, some twelve months since, undertook to improve *Fifth* and *Sixth* streets, and after excavating the one and filling the other, have left both in an unfinished condition. I consider it necessary that the work on said two streets should be completed by proper grading, curbing, and gutters. *First*, *Second*, *Third*, and *Fourth* streets are greatly in need of improvements and repairs. In winter, at some points, the carriageways are almost impassable, and the sidewalks and gutters need attention at once, not only as an improvement, but as a sanitary measure. *Market*, *Frederick*, and *Fayette* streets, crossing the above, are, in many places, both as to the carriageways and sidewalks, greatly in need of improvements and repairs. While not designating the particular points in the above streets, which, in my judgment, need improvements, preferring to leave that to the better judgment of the Board of Public Works, I would especially call their attention (the same having been called to my own) to the sidewalks and carriageways on *Frederick* street, between First and Second streets, the *east side of Market Space*, between Second and Third streets, and *Fourth* street, between High and Fayette streets; also to the condition of the *various sewers* throughout my District, especially those of First street. I deem their improvement as a matter of necessity, not only as an improvement, but as a sanitary measure. In summer, it often occurs that the smell arising from them forces persons to take other directions. It has been suggested that this can be remedied by placing in each, on the street, proper traps, and arching the sewers approaching the street. I would add, that after the receipt of your letter, I requested a number of my constituents in various portions of my district to make suggestions as to needed improvements, but as yet have learned from but few. Should they do so hereafter, I shall take pleasure in calling the attention of the Board of Public Works to such improvements as they may suggest, or such as may come to my own knowledge.

Very respectfully,

W. D. CASSIN.

134

EXHIBIT G.

Filed April 30, 1884. R. J. Meigs, Clerk.

THE DISTRICT OF COLUMBIA
vs.
METROPOLITAN RAILROAD CO. } At Law. No. 22458.

Schedule Showing—

Item.	*Date of Award.*	*Date of Contract.*	*Contract Price.*
1.	November 29, 1873.	July 8, 1873.	$3.50 per sq. yd.
	November 29, 1873.	November 29, 1873.	3.20 "
2.	September 14, 1871.	September 25, 1871.	2.50 "
	" "	" "	3.50 "
	September 19, 1871.	Amendment.	"At Board prices."
	September 26, 1871.	"	$3.10 per sq. yd.
	May 16, 1872.	"	"At Board prices."
3.	September 14, 1871.	September 25, 1871.	$3.50 per sq. yd.
	September 19, 1871.	Amendment.	"At Board prices."
	May 16, 1872.	"	" "
4.	August 9, 1873.	"	$3.20 per sq. yd.
	August 13, 1873.	August 14, 1873.	3.50 "
5.	January 30, 1875.	April 3, 1875.	No price stated.
6.	July 2, 1873.	July 8, 1873.	$4.25 per sq. yd.
	July 24, 1873.	July 28, 1873.	3.50 "
	August 27, 1873.	Extension.	3.50 "
7.	September 14, 1871.	September 16, 1871.	3.20 "
	November 23, 1871.	Extension.	3.20 "
	May 2, 1872.	May 2, 1872.	3.00 "
8.	September 14, 1871.	September 18, 1871.	3.00 "
	April 23, 1872.	Extension.	3.20 "
9.	July 14, 1873.	July 16, 1873.	No price stated.
	September 13, 1873.	Amendment.	" "
10.	May 31, 1872.	June 3, 1872.	$3.00 per sq. yd.
11.	July 25, 1873.	July 8, 1873.	No price stated.
	November 29, 1873.	Amendment.	$3.50 per sq. yd.
12.	July 24, 1873.	July 28, 1873.	3.50 "
	August 27, 1873.	Amendment.	3.50 "
13.	July 24, 1873.	July 28, 1873.	3.50 "
	August 27, 1873.	Amendment.	3.50 "
14.	July 2, 1873.	July 8, 1873.	4.25 "
	December 1, 1873.	December 1, 1873.	2.00 "
15.	October 5, 1872.	October 8, 1872.	1.75 "
	October 17, 1872.	Amendment.	No price stated.
	December 5, 1872.	December 5, 1872.	$3.20 per sq. yd. 1.40 "
16.	October 5, 1872.	December 6, 1872.	3.20 "
	October 17, 1872.	Amendment.	3.20 "
	December 5, 1872.	"	3.20 "
17.	August 3, 1872.	August 7, 1872.	3.20 "
18.	July 14, 1873.	July 16, 1873.	No price stated.
	September 13, 1873.	Amendment.	" "
19.	September 7, 1872.	September 12, 1872.	$3.50 per sq. yd.
20.	October 5, 1872.	December 6, 1872.	3.20 "
	October 17, 1872.	Amendment.	3.20 "
	December 5, 1872.	"	3.20 "
21.	October 5, 1872.	October 8, 1872.	3.20 "
	October 17, 1872.	Amendment.	3.20 "
	December 5, 1872.	"	3.20 "
22.	October 5, 1872.	October 8, 1872.	3.20 "
	May 29, 1873.	Amendment.	3.20 "
23.	December 5, 1872.	August 12, 1873.	3.50 "
24.	August 12, 1873.	August 12, 1873.	3.50 "
25.	*No award found.*	April 10, 1873.	0.55 "

135 EXHIBIT H.

Filed April 30, 1884. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA, *vs.* METROPOLITAN RAILROAD CO. } At Law. No. 22458.

Form of Award.

(Journal "A" of Board of Public Works, 1873, p. 402.)

BOARD OF PUBLIC WORKS,
DISTRICT OF COLUMBIA,
WASHINGTON, *July* 23, 1873.

The Board met at the usual hour.

The chief engineer was directed to * * * amend contract 740 with Albert Gleason so as to include the paving with Miller wooden pavement treated, the carriageways of Seventh street, between E and G streets northwest, and of F street, between Fifth and Ninth streets northwest, work to be done in first-class condition, and completed within twelve (12) working days. * * *

On motion the Board adjourned.

CHARLES S. JOHNSON,
Asst. Secretary.

EXHIBIT I.

Filed April 30, 1884. R. J. Meigs, Clerk.

THE DISTRICT OF COLUMBIA *vs.* WASHINGTON METROPOLITAN R. R. Co. } At Law. No. 22458.

Form of Contract.—No. 511.

136 This contract, made and concluded this twelfth day of September, in the year one thousand eight hundred and seventy-two, by and between Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, A. B. Mullett, and S. P. Brown, constituting and composing the Board of Public Works of the District of Columbia, of the first part, and John O. Evans, of Washington, D. C., of the second part, witnesseth:

First. That the said party of the second part has agreed, and by these presents doth agree, with the said party of the first part, for the consideration hereafter mentioned and contained, and under the penalty expressed in a bond bearing even date with these presents, and hereunto annexed, to furnish, at his own proper cost and expense, all the necessary materials and labor, and, in a good, firm, and substantial manner, to lay and put down the pavement known as and called the Stow wooden pavement, or the pavement known as and called the Miller wood pavement, or the pavement known as and called the Ballard wooden pavement, on the carriageway of Seventh

street west, between B street north and B street south; * * * also to lay and put down the said Stow pavement, or the said Miller pavement, or the said Ballard pavement, on the carriageway of East Capitol street, between 1st street and Lincoln square, * * * and the wooden blocks of said Stow, Ballard, and Miller pavements to be burnettized in accordance with certain specifications, and according to certain patents named in said contract.

Second. It is further agreed that the said party of the first part shall appoint, from time to time, such persons or person as may be by said party deemed proper, to inspect the material to be furnished and the work to be done under this contract, and that such persons or person shall have any and all opportunity and privileges which may be necessary to enable them to faithfully make the inspection aforesaid.

Third. It is further agreed that the work under this contract shall be commenced on or before the 17th day of September, 1872.

Fourth. It is further agreed that the said party of the first part may, on notice to the parties of the second part, suspend work under this contract; but if not suspended it shall be completed within thirty days from the date fixed for its commencement, and
137 that the said work shall not be sub-let without the consent, in writing, of the said party of the first part, and that any sub-letting or assignment without such consent shall work a forfeiture of this contract.

Fifth. It is further agreed that if, at any time, the party of the first part shall be of opinion that the said work, or any part thereof, is unnecessarily delayed, or that the said contractor is wilfully violating any of the conditions or covenants of this contract, or is executing the same in bad faith, all of the work may be discontinued under this contract, or any part thereof; and the said party of the first part shall thereupon have the power to place such and so many persons as may be deemed advisable, by contract or otherwise, to work at and complete the work herein described, or any part thereof, and to use such materials as may be found upon the line of said work, or to procure other materials for the completion of the same, and to charge the expense of said labor and materials to the party of the second part; and the expense so charged shall be deducted and paid by the party of the first part out of such moneys as may be then due, or may at any time thereafter grow due, to the said party of the second part, under and by virtue of this agreement or any part thereof; and in case such expense is less than the sum which would have been payable under this contract if the same had been completed, the party of the second part shall be entitled to receive the difference, and in case such expense shall exceed the last said sum the amount of such excess shall be paid to the party of the first part by the party of the second part.

Sixth. It is further agreed that all loss or damage arising out of the nature of the work to be done under this agreement, or from any unforseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from incumbrances to individuals, property, or otherwise, on the

line of the work or adjacent thereto, shall be sustained by the said contractor.

Seventh. It is further agreed that the said party of the second part shall punctually pay the workmen who shall be employed by him on work under this contract in cash current and not in what is denominated store pay or orders; and that he will, from time to time, and as often as may be required by said party of the
138 first part, furnish to said party satisfactory evidence that all persons who have done work or furnished materials have been paid, as herein required; and if such evidence is not furnished such sum or sums as may be necessary for such payment or claims shall be retained by said party of the first part until the said claims shall be fully satisfied.

Eighth. And it is further agreed that partial payments shall be made by the duly authorized financial agent of the said party of the first part on the monthly estimates of the chief engineer of the Board of Public Works aforesaid, and that whenever the said chief engineer aforesaid shall certify in writing that the party of the second part completely performed this contract on his part, and shall submit with said certificate his estimate of the amount due the party of the second part, then, within thirty days, as hereinafter provided, the said party of the second part shall be entitled to receive the full amount due under this contract, deducting therefrom all previous partial payments which may have been made as hereinafter mentioned.

And it further expressly agreed that no money shall become due and payable under this contract except upon the certificate of said engineer, as hereinbefore provided; and the said party of the second part further agrees that he shall not be entitled to demand or receive payment for any portion of the aforesaid work except in the manner set forth in this agreement; and when each and all of the stipulations hereinbefore mentioned are complied with, and the engineer shall have given his certificate to that effect, a final settlement shall be made in writing between the parties, and the whole amount found due the party of the second part under this contract shall be paid to him, excepting such sum or sums as may be retained under any provision of this contract: *Provided*, That partial payments may be made under direction of the Board, otherwise than upon the estimates of the engineer, as provided above, if, in the opinion of the Board, the vigorous prosecution of the work will be promoted thereby.

Ninth. It is further agreed that if at any time during the period of three years from the completion of the work to be done under this contract any part or parts thereof shall become defective
139 from imperfect or improper material or construction, and, in the opinion of the said party of the first part, require repair, the said party of the second part will, on being notified thereof, immediately commence and complete the same to the satisfaction of the party of the first part; and in case of a failure or neglect of the said party of the second part so to do, the same shall be done

under the directions and orders of the party of the first part, at the cost and expense of the party of the second part.

Tenth. It is further agreed that the said party of the second part shall receive the following prices as full compensation for furnishing all the materials and labor which may be required in the prosecution of the whole of the work to be done under this agreement, and in all respects completing the same, to wit:

For the Stow wooden pavement, burnettized as aforesaid, per square yard, $3.50, to include two feet of grading.

For the Miller wooden pavement, burnettized as aforesaid, per square yard, $3.50, to include two feet of grading.

For the Ballard wooden pavement, burnettized as aforesaid, per square yard, $3.50, to include two feet of grading.

* * * * * * *

Which said sums or prices the said parties of the first part shall pay to the said parties of the second part, as herein provided.

Eleventh. It is further agreed that the measurements shall be made by the engineer of the said party of the first part or his assistants.

Twelfth. And the said party, constituting and composing the Board of Public Works in and for the District of Columbia aforesaid, agree with the said party of the second part to perform all the stipulations of this contract obligatory in it, and to pay, or cause to be paid, to the said party of the second part, or to his heirs, executors, or administrators, in lawful money of the United States, the amount which may be found from time to time due him, according to the contract.

Thirteenth. It is further agreed that this contract shall be subject to any and all provisions of an act entitled "An act to provide a government for the District of Columbia," approved February 21, 1871, so far as the same shall or may be in any respect
140 applicable to said contract, and also to any law of the District of Columbia pertinent thereto, or to any part thereof, as fully as if the same were particularly set forth herein.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

H. D. COOKE, [L. S.]
ALEX. R. SHEPHERD, [L. S.]
JAMES A. MAGRUDER, [L. S.]
A. B. MULLETT, [L. S.]

Board of Public Works of the District of Columbia.

JOHN O. EVANS, *Contractor.*

Signed and sealed in presence of—

CHAS. W. KREBS.
WM. TINDALL.

Know all men by these presents that John O. Evans, D. S. Evans, and Lewis Clephane, of the District of Columbia, are held firmly bound unto Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, Alfred B. Mullett, and Samuel P. Brown, constituting and composing the Board of Public Works of the District of Columbia, in the sum of forty thousand dollars, lawful money of the United States of America, to be paid to said Henry D. Cooke, Alexander R. Shepherd, Alfred B. Mullett, Samuel P. Brown, and James A. Magruder, constituting and composing the Board of Public Works of the District of Columbia, or to the certain attorney, successor, or assigns, thereof; for which payment, well and truly made, we and each of us do bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this 12th day of September, A. D. one thousand eight hundred and seventy-two.

Whereas the above-bounden John O. Evans, by an instrument in writing, under his hand and seal, bearing even date with these presents, has contracted with Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, Alfred B. Mullett, and Samuel P. Brown, constituting and composing the Board of Public Works of the Distrct of Columbia, to lay and put down the Stow, Miller, or Ballard pavement on the carriageway * * * on Seventh street,
141 between B street north and B street south; also to lay and put down the Stow, Miller, or Ballard wooden pavement on the carriageway of East Capitol street, between First street and Lincoln square, * * * as fully described in foregoing contract, and on the conditions and for the considerations in the aforesaid contract mentioned and contained or referred to therein:

Now, therefore, the condition of the above obligation is such, that if the said John O. Evans shall well and truly, and in good, sufficient, and workmanlike manner, execute the work mentioned in said contract, and complete the same in accordance with the stipulations thereof, and in each and every respect fully comply with the provisions and requirements therein contained, then this obligation to be void; otherwise, to remain in full force and virtue.

JOHN O. EVANS. [SEAL.]
D. S. EVANS. [SEAL.]
LEWIS CLEPHANE. [SEAL.]

Witness to L. Clephane's signature—
WM. E. NOTT.

Signed and sealed in presence of—
CHAS. W. KREBS.
WM. E. NOTT.

142 EXHIBIT J.

Filed April 30, 1884. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA
vs.
METROPOLITAN RAILROAD CO. } At Law. No. 22458.

Form of Certificate.

DISTRICT OF COLUMBIA.

$——. *Board of Public Works.* No. 11992.

Certificate of Indebtedness.

Be it known that the Board of Public Works of the District of Columbia, having assessed upon lot number ——, in square number ——, in the city of Washington, in said district, the sum of —— for its proportionate amount of the cost of improvements upon —— street ——, issue this certificate of indebtedness against said property for said sum, with interest at the rate of ten per centum per annum from the date hereof until paid. Said assessment and this certificate constitute a lieu upon said property.

This certificate is issued in accordance with an act of the Congress of the United States, entitled "An act to provide a government for the District of Columbia," approved February 21st, 1871; and an act of the Legislative Assembly of the District of Columbia, entitled "An act prescribing the mode of assessments for special improvements and providing for the collection thereof," approved August 10th, 1871; and also an act of said Legislative Assembly, entitled "An act amendatory of an act entitled 'An act prescribing the mode of assessments and providing for the collection thereof, approved August 10th, 1871,'" approved August 23d, 1871.

Given under our hands, in the city of Washington, D. C., this —— day of ——, eighteen hundred and seventy ——.

—— ——,
—— ——,
—— ——,
—— ——,
—— ——,

Board of Public Works, District of Columbia.

Endorsed across the face: B. P. W.—Void.

143 Proceedings before the supreme court of the District of Columbia, commencing on the fourth Monday, 26th day, of January, 1885.

Present: Chief Justice Cartter and Justices MacArthur and James.

DISTRICT OF COLUMBIA, Plaintiff,
vs.
THE METROPOLITAN RAILROAD COMPANY, Defendant. } At Law. No 22458.

Upon the motion of counsel, ordered that this case be placed upon the trial calendar of the present term.

MONDAY, *June 15th*, 1885.

Session resumed pursuant to adjournment.
Present: Justices Cox, James, and Merrick.

DISTRICT OF COLUMBIA
vs.
WASHINGTON & GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

and

DISTRICT OF COLUMBIA
vs.
METROPOLITAN RAILROAD COMPANY. } At Law. No. 22458.

These causes having been consolidated, or rather heard
144 together, and having been argued by counsel and submitted to this court—

It is now here considered by this court that the judgment of the special term be, and it is hereby affirmed with costs to be taxed by the clerk.

TUESDAY, *June* 23, 1885.

Session resumed pursuant to adjournment.
Present: Justices Hagner and James.

DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY. } At Law. No. 22458.

It is hereby ordered by the court, sitting in General term this 23d day of June, 1885, that the penalty of the bond to be given by the defendants to supercede the judgment rendered herein by this court, be, and the same is hereby, fixed at one hundred and eighty thousand dollars; and it is further ordered that the bond of the defendant for the said amount as a penalty, with John Cammack, Edward Cammack, Daniel B. Clark, Albert A. Wilson, and George W. Pearson as sureties, dated June 22, 1885, be, and the same is hereby, approved to operate as a supersedeas.

A. B. HAGNER.

145 In the Supreme Court of the District of Columbia, the 22d day of June, 1885.

Filed June 23, 1885.

THE DISTRICT OF COLUMBIA
vs.
THE METROPOLITAN RAILROAD COMPANY. } No. 22458. At Law. In Error.

Know all men by these presents that we, The Metropolitan Railroad Company, principal, and John Cammack, Edward Cammack, Dan'l B. Clarke, Albert A. Wilson, & George W. Pearson, are bound unto the above-named District of Columbia, in the sum of one hundred and eighty thousand dollars ($180,000), to be paid to the said District of Columbia, its successors and assigns, to which pay-

ment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 22d day of June, 1885.

Whereas the above-named Metropolitan Railroad Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia.

Now therefore the condition of this obligation is that if the above-named Metropolitan Railroad Company shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

THE METROPOLITAN RAILROAD COMPANY.
[SEAL.] GEORGE W. PEARSON,
President.

JOHN CAMMACK. [SEAL.]
EDMUND CAMMACK. [SEAL.]
DAN'L B. CLARKE. [SEAL.]
ALBERT A. WILSON. [SEAL.]
GEORGE W. PEARSON. [SEAL.]

Sealed and delivered in presence of—
G. B. COLEMAN as to GEO. W. PEARSON.
M. L. CAMMACK as to { JNO. CAMMACK. / EDMUND CAMMACK.
R. H. HAZARD as to ALBERT A. WILSON.
F. E. O'BRIEN as to DAN'L B. CLARKE.

Approved—A. B. Hagner, June 23, '85.

146 CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the foregoing 145 pages of printing and writing annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 1st day of August, 1885.

[Seal Supreme court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

Endorsed on cover: District of Columbia. Supreme court. No. 266. The Metropolitan Railroad Company, plaintiff in error, *vs.* The District of Columbia. Filed August 6th, 1885.